

to an Administrative Law Judge, who ordered the Government to respond to Respondent's statement that "he currently has an active license." GX 5, at 1.

In the meantime, on September 3, 2014, the New Mexico Medical Board notified a DEA Diversion Investigator in the Albuquerque District Office that the Board's August 12, 2014 Order did not place any formal restrictions on Respondent's authority to prescribe controlled substances, explaining that his prescribing was not at issue in the Board's case. GX 3. Thereafter, on September 9, 2014, the Government filed a motion for Termination of Proceedings, stating that the allegations of the Show Cause Order were now moot and that "these developments apparently obviate the need for any further proceedings." GX 5, at 2.

Noting that Respondent had not requested a hearing, the ALJ concluded that "the only jurisdictional authority" she possessed was to determine whether to grant Respondent's request for "a reasonable extension of the time allowed for response to an Order to Show Cause." Order Denying Respondent's Motion For Extension of Time, at 2 (quoting 21 CFR 1316.47). The ALJ thus concluded that she did not have jurisdiction to rule on the Government's motion. *Id.* The ALJ then denied Respondent's motion, "with the understanding that the Government will take the necessary steps to properly dismiss the" Show Cause Order. *Id.*

On February 3, 2015, the Government submitted a "Request [f]or Dismissal [o]f Order [t]o Show Cause." Therein, the Government states that although Respondent was without state authority to handle controlled substances on July 15, 2014, when the Show Cause Order was issued, the New Mexico Medical Board has since lifted the suspension of his medical license and Respondent currently has no restrictions on his state authority to handle controlled substances.² *Id.* at 2. Because the Show Cause Order sought revocation of Respondent's registration solely on the basis of his lack of state authority to handle controlled substances, and that ground for revocation no longer exists, the Government requests that I dismiss the Order. *Id.* at 2.

Based on my review of the Board's Order, as well as the Board's September 3, 2014 letter to the Diversion Investigator, I find that Respondent is currently authorized to dispense controlled substances in New Mexico,

the State in which he is registered with this Agency. Because Respondent's loss of state authority was the sole basis for the Show Cause Order and this ground no longer exists, I conclude that this case is now moot and will order that the Show Cause Order be dismissed.

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 the Order to Show Cause issued to Nicholas J. Nardacci, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15-19]

Jeffrey S. Holverson, M.D.; Decision and Order

On March 27, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Jeffrey S. Holverson, M.D. (Respondent), of Salt Lake City, Utah. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances as a practitioner, solely on the ground that he does "not have authority to handle controlled substances in . . . Utah, the [S]tate in which [he is] registered with the DEA." Show Cause Order, at 1.

As the factual basis for the proposed action, the Show Cause Order alleged that on January 8, 2015, Respondent "entered into a 'Non-Disciplinary Limitation Stipulation and Order'" with the Utah Division of Occupational and Professional Licensing, pursuant to which he agreed to the suspension of his authority to dispense controlled substances. *Id.* The Order further alleged that "[t]his suspension remains in effect" and that "[c]onsequently . . . DEA must revoke [his] registration." *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Following service of the Show Cause Order, Respondent requested a hearing on the allegations. Order Granting the Gov't Mot. for Summ. Disp. (hereinafter, ALJ Order), at 2. Thereafter, the Government moved for summary disposition on the ground that by virtue

of the Non-Disciplinary Limitation Stipulation and Order, which Respondent entered into on January 8, 2015, he "does not have authority to . . . dispense controlled substances" under Utah law, and that notwithstanding that the "suspension may or may not continue" past the 180-day period set forth in the State's Order, "DEA final orders are clear and unequivocal that [Respondent's] registration should be revoked." Gov't Mot. for Summ. Disp., at 5. While in his hearing request, Respondent had objected to the proposed revocation of his registration, he did not respond to the Government's motion. ALJ Order, at 2-3. The ALJ, finding it undisputed that "the limitation on [Respondent's] ability to prescribe controlled substances will remain in effect until at least July 7, 2015," and noting that "there is no guarantee that his authority . . . will be restored after 180 days," granted the Government's motion and recommended that Respondent's registration be revoked and that any pending applications to renew or modify his registration be denied. *Id.* at 4-6.

Neither party filed exceptions to the ALJ's Order. Thereafter, on June 9, 2015, the ALJ forwarded the record to my Office for Final Agency Action. However, upon review of the record, it was noted that the Non-Disciplinary Limitation Stipulation was due to expire on or about July 7, 2015. Accordingly, on July 27, 2015, I directed the parties to address whether the order remained in effect and if the order no longer was in effect, "to address whether Respondent currently possesses authority to dispense controlled substances under the laws of the State of Utah." Order of the Administrator, at 1 (July 27, 2015).

On August 5, 2015, the Government filed its Response to my Order. Therein, the Government states that "[t]he time of the Suspension Order has now expired, and DEA has been informed by [the Division of Professional Licensing] that at this time the Suspension order has not been extended." Gov't Response, at 2. The Government thus acknowledges that "at this time Respondent is allowed to dispense controlled substances under the laws of the State of Utah." *Id.* The Government thus requests that the Show Cause Order be dismissed. *Id.*

Because the Show Cause Order was based solely on Respondent's lack of authority under state law to dispense controlled substances and that factual predicate no longer exists, I grant the Government's request and will dismiss the Show Cause Order.

² The Government submitted a copy of the Board's Order with its Request for Dismissal. See GX 2.

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 the Order to Show Cause issued to Jeffrey S. Holverson, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Devra Hamilton, N.P.; Decision and Order

On November 24, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Devra Hamilton, N.P. (hereinafter, Respondent), of Las Vegas, Nevada. GX 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration MH2194176, on the ground that she does not currently possess authority to handle controlled substances in Nevada, the State in which she is registered with the Agency. *Id.* at 1-2 (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order specifically alleged that on January 16, 2014, the Nevada State Board of Nursing suspended Respondent's license as an Advance Practitioner of Nursing (APN), after she admitted that the Board had "sufficient evidence to prove that [she] prescribed large amounts of unit doses of controlled substances between January 1, 2012 and December 31, 2012, that [she] failed to adequately assess patients prior to prescribing controlled substances, and that [she] documented inaccurate and contradictory information in medical records." *Id.* at 1 (citations omitted). The Show Cause Order further alleged that in March 2014, the Nevada State Board of Pharmacy revoked her license to prescribe controlled substances based on the Nursing Board's suspension of her APN license. *Id.* The Order thus alleged that Respondent is "currently without authority to handle controlled substances" in the State in which she is registered, and that her registration is therefore subject to revocation.¹ *Id.* at 2.

¹ The Show Cause Order also notified Respondent of her right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the

As evidenced by the signed return receipt card, on December 1, 2014, Respondent was served with the Show Cause Order. GX 2. On January 6, 2015, Respondent filed a letter (dated Jan. 2, 2015) which presented her position on the issues involved in the Nursing Board's proceeding. GX 3. Respondent did not, however, dispute that DEA "must revoke" her registration. *Id.* Nor did she request a hearing on the allegations of the Show Cause Order. *Id.*

As explained above, under 21 CFR 1301.43(c), "[a]ny person entitled to a hearing . . . may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing . . . together with a written statement regarding such person's position on the matters of fact and law involved in such hearing." However, DEA regulations require that the written statement be filed "within 30 days after the date of receipt of the" Show Cause Order, 21 CFR 1301.43(a), and specify that documents "shall be dated and deemed filed upon receipt by the Hearing Clerk." *Id.* § 1316.45. Thus, I find that Respondent's letter was untimely and do not consider it. I further find that Respondent has waived her right to a hearing.

Thereafter, on January 28, 2015, the Government submitted a Request for Final Agency Action with accompanying documentation, including the Nursing Board's Order suspending her APN license and a printout from the Nevada State Board of Pharmacy showing the status of her state controlled substance license. I make the following findings of fact.

Findings

Pursuant to 5 U.S.C. 556(e), I take official notice of Respondent's registration record with the Agency. According to that record, Respondent is currently registered as a mid-level practitioner, with authority to dispense controlled substances in schedules II through V, at the address of 9010 W. Cheyenne, Las Vegas, NV 89129. Respondent's registration does not expire under October 31, 2016.

On January 8, 2014, Respondent entered into an "Agreement for Probation and Suspension of [her] Advanced Practitioner of Nursing Certificate"; on January 16, 2014, the Board approved the agreement. Therein, Respondent denied the allegations raised by the Board, but admitted that "the Board ha[d] sufficient evidence to prove that she prescribed large amounts

consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

of unit doses of controlled substances between January 1, 2012 and December 31, 2012, that she failed to adequately assess patients prior to prescribing controlled substances, and that she documented inaccurate and contradictory information in medical records." GX 4, at 1. Respondent further agreed to the Board's issuance of a decision and order which suspended her Advanced Practitioner of Nursing Certificate "for a minimum of one year." *Id.* at 3. According to the online records of the Board, Respondent's Advanced Practitioner of Nursing Certificate either expired on January 16, 2014 or remains suspended as of this date. So too, her Board of Pharmacy license remains suspended as of this date.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration "upon a finding that the registrant . . . has had [her] State license or registration suspended [or] revoked . . . and is no longer authorized by State law to engage in the . . . distribution [or] dispensing of controlled substances." 21 U.S.C. 824(a)(3). Moreover, DEA has long held that a practitioner must be currently authorized to handle controlled substances in the "jurisdiction in which [she] practices" in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) ("the term 'practitioner' means a physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [she] practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice."); *see also id.* § 823(f) ("The Attorney General shall register practitioners . . . to dispense . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [she] practices."). As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang*, 72 FR 54297, 54298 (2007); *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

Here, the evidence shows that both Respondent's Advance Practitioner of Nursing Certificate and her state Controlled Substance License have been suspended by the Nevada State Board of Nursing and the Nevada State Board of Pharmacy respectively. I therefore hold that Respondent no longer possesses authority under Nevada law to dispense controlled substances and that she is