India: Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Fourth Review).

By order of the Commission.

Issued: April 17. 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–08064 Filed 4–20–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–8]

William H. Wyttenbach, M.D.; Decision and Order

On October 4, 2016, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to William H. Wyttenbach, M.D. (Respondent), of Fort Myers, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. BW1311997, on the ground that he ''do[es] not have authority to handle controlled substances in the State of Florida, the [S]tate in which [he is] registered with the'' Agency. Show Cause Order, at 1 (citing 21 U.S.C. 823(f), 824(a)(3)).

As to the jurisdictional basis for the proceeding, the Show Cause Order alleged that Respondent is registered ''as a practitioner in [s]chedules II–V,'' pursuant to the above registration number, at the registered address of 16329 South Tamiami Trail, Units 5&6, Fort Myers, Florida. *Id.* The Order further alleged that Respondent's registration ''expires by its terms on May 31, 2018.'' *Id.*

As to the substantive basis for the proceeding, the Show Cause Order alleged that effective June 15, 2016, the Florida Board of Medicine ''suspended [his] authority to practice medicine,'' and that he is ''without authority to handle controlled substances in Florida, the [S]tate in which [he is] registered with'' DEA. *Id.* The Order thus alleged that Respondent's registration is subject to revocation.[1] *Id.* (citing 21 U.S.C. 802(21), 823(f), 824(a)(3)).

On November 3, 2016, Respondent submitted a request for a hearing. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to ALJ Charles Wm. Dorman. Thereafter, the ALJ issued an order which directed the Government to submit its evidence in support of the allegation and any motion for summary disposition on this ground by 2 p.m. on November 28, 2016. *See* Briefing Schedule for Lack of State Authority Allegations, at 1. The ALJ also ordered that if the Government filed such motion, Respondent's reply was due by 2 p.m. on December 12, 2016. *Id.*

On November 8, 2016, the Government filed its Motion for Summary Disposition, which asserted that ''on June 15, 2016, the State of Florida Board of Medicine suspended Respondent's state medical license.'' Mot. at 2. As support for its Motion, the Government attached a June 15, 2015 Final Order issued by the Florida Board of Medicine which suspended Respondent's Florida medical license ''until such time as he personally appears before the Board and demonstrates that his license to practice medicine in all jurisdictions is free from all encumbrances.'' Appendix C, at 4. The Government also attached an affidavit by a DEA Diversion Investigator attesting to the authenticity of the Florida Board's Final Order, *see* Appendix B, as well as a copy of Respondent's DEA registration. *See* Appendix A.

Based on this evidence, the Government argued that Respondent is without authority to handle controlled substances in Florida and therefore, he does not meet the statutory definition of a practitioner. Motion, at 3–4 (citing 21 U.S.C. 802(21)). Invoking cases holding that revocation is warranted even when a registrant's state authority has been summarily suspended, the Government maintained that because possessing authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for maintaining a DEA registration and Respondent does not possess such authority, revocation of his registration is warranted. *Id.* at 4 (citing *Gary Alfred Shearer,* 78 FR 19,009, 19012 (2013) (other citation omitted)).

On December 5, 2016, Respondent filed his Response to the Government's Motion. Therein, Respondent stated that he ''agrees[ ] he has no authority to practice medicine in Florida and has not done so since June 4, 2015 and ongoing.'' Response, at 1. Respondent asserted, however, that he does have an active and unrestricted medical license in Wyoming. *Id.* He further asserted that the suspension of his Florida license was illegal, that the Florida Board had violated his Due Process rights, and that he is suing the Florida Board as well as the medical boards of Tennessee, Colorado, Kentucky, and Washington, and a DEA Agent for civil rights violations in federal district court in Fort Myers, Florida. *Id.* at 2. He also asserted that this proceeding violates his ''constitutional right of due process to appeal a non final order'' and that ''no alleged final order exists until ALL final appeals are exhausted.'' *Id.* at 2–3.

On review, the ALJ noted that under the CSA, ''a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which [he] is registered'' in order to maintain his registration. R.D. at 3 (citing 21 U.S.C. 802(21), 823(f)). The ALJ also noted that under agency precedent, revocation is warranted ''where the practitioner lacks state authority, even if the practitioner has not had the opportunity to contest the charges'' brought by the state board, ''or if there is a possibility that the Respondent's state license will be reinstated in the future.'' *Id.* (citing *Richard H. Ng.,* 77 FR 29694, 29695 (2012); other citations omitted). Finding that there was no dispute over the material fact that ''Respondent lacks state authorization to handle controlled substances in Florida, where [he] is registered,'' the ALJ concluded that Respondent is not entitled to maintain his registration and granted the Government's motion, with the recommendation that I revoke his registration. *Id.* at 4.

On January 12, 2017, after the expiration of the time period for filing exceptions, the ALJ forwarded the record to my Office for final agency action. More than two months later, Respondent submitted a pleading titled as: ''Motion To Reconsider And/Or Motion for Telephonic Hearing, And/Or Motion To Dismiss Administrative Revocation.''

I decline to consider Respondents' motions. To the extent Respondent seeks reconsideration, his motion is not ripe,[2] and even if it were ripe, it would fail. First, his motion presents no newly discovered evidence. *See ICC* v. *Brotherhood of Locomotive Engineers,* 482 U.S. 270, 278 (1987). Second, he does not point to any ''changed circumstance'' that would render my adoption of the ALJ's factual findings, legal conclusions and recommended order inappropriate. *Id.* As for all three motions, they simply raise legal arguments which could have, and should have, been raised in a brief of exceptions to the ALJ's recommended decision. Respondent did not, however,

[1] The Show Cause Order also notified Respondent of his right to submit a corrective action plan and the procedure for doing so. Show Cause Order, at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

[2] The ALJ's recommended decision is not a final order of the Agency, and thus a motion for reconsideration is not ripe until the Agency issues its Decision and Order.

file a brief of exceptions. Accordingly, I adopt the ALJ's factual findings, legal conclusions and recommended order. I make the following factual findings.

Findings

Respondent is the holder of DEA Certificate of Registration No. BW1311997, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, at the registered location of Southwest Florida Medical, 16329 S. Tamiami Trail, Units 5 & 6, Fort Myers, Florida. Mot. for Summ. Disp., at Appendix A. This registration does not expire until May 31, 2018. *Id.*

Respondent is also the holder of physician's license number ME 46329, issued by the Florida Board of Medicine. *Id.* at Appendix C, at 3 (Final Order adopting factual allegations of Administrative Complaint); *id.* at 8 (Complaint allegation that ''[a]t all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 46329.''). However, on June 15, 2015, the Florida Board of Medicine issued a Final Order suspending ''Respondent's license to practice medicine in the State of Florida . . . until such time as he personally appears before the Board and demonstrates that his license to practice medicine in all jurisdictions is free from all encumbrances.'' *Id.* at 4. According to the Florida Department of Health's Web site, of which I take official notice, Respondent's medical license remains suspended as of the date of this Decision and Order.[3]

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 (CSA), ''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 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,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27616 (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 Act, 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 medicine. *See, e.g., Hooper,* 76 FR at 71371–72; *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); *Blanton,* 43 FR at 27616.

In his Opposition, Respondent raised three main arguments. First, while he acknowledged that his Florida license has been suspended, he maintained that he has an active and unrestricted medical license in Wyoming. This, however, is beside the point because he is registered in Florida and not Wyoming, and his ability to hold a registration in Florida is conditioned on his possessing authority under Florida law to dispense controlled substances. *See* 21 U.S.C. 802(21), 823(f); *see also United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (''Registration of physicians and other practitioners is mandatory if the applicant is authorized to dispense drugs . . . under the law of the State in which he practices. [21 U.S.C.] § 823(f). In the case of a physician, this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice.''); *Blanton,* 43 FR at 27617 (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

Second, Respondent argues that the suspension of his Florida license was illegal and that he is suing the Florida Board for violating his right to Due Process. DEA, however, has no authority to adjudicate the validity of the decisions of state boards, which are deemed to be presumptively lawful for the purposes of the Controlled Substances Act. *See Kamal Tiwari, et al.,* 76 FR 71604, 71607 (2011) (quoting *George S. Heath,* 51 FR 26610 (1986) (''DEA accepts as valid and lawful the action of a state regulatory board unless that action is overturned by a state court or otherwise pursuant to state law.'')). Rather, Respondent is required to litigate his claims challenging the validity of the suspension in the administrative and judicial fora provided by the State of Florida. *See Tiwari,* 76 FR at 71607 (quoting *Heath,* 51 FR at 26610); *Zhiwei Lin,* 77 FR 18862, 18864 (2012); *Sunil Bhasin,* 72 FR 5082, 5083 (2007).

Finally, Respondent maintains that this proceeding violates his due process right to appeal a non-final order and that no alleged final order exists until he exhausts his appeals. Putting aside that the Board characterized its Order suspending his state license as a ''Final Order,'' Respondent offers no support for his theory that the Agency's action violates whatever right he has at this point under Florida law to challenge the Board's Final Order. *See* Appendix C, at 5 (Board Order's notice to Respondent that under Florida law, he had 30 days to file a notice of appeal of the Board's Order). Indeed, nothing the Agency does in this proceeding, which involves the revocation of his DEA registration, effects his ability to seek judicial review of the Board's Final Order. While Respondent further argues that the Board's Order is not a Final Order (notwithstanding the Board's characterization that it is) until he exhaust his appeals, he cites neither a provision of the Florida statutes nor any decision of the Florida courts to support his contention.[4]

[3] Respondent may dispute this finding by filing a properly supported motion for reconsideration within 10 business days of the date this Order is mailed. *See* 5 U.S.C. 556(e).

[4] Even if the Board Order's was not final, Respondent's registration would still be subject to revocation based on his lack of state authority. Indeed, DEA has long exercised authority to revoke a registration even where a State Board resorts to summary process to suspend a practitioner's prescribing authority, because notwithstanding that the practitioner may eventually prevail at hearing before the Board, the practitioner ''is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' 21 U.S.C. 824(a)(3); *Heath,* 51 FR at 26610. This interpretation of the Agency's authority has been sustained on judicial review. *See Maynard* v. *DEA,* 117 Fed. Appx. 941, 944 (5th Cir. 2004) (rejecting argument that DEA exceeded its authority revoking a practitioner's registration because his state license was ''merely temporarily suspended'' and recognizing that ''DEA need not inquire into the validity of a state licensing agency's decisions under section 824(a)(3)''). Of note, the Board's Order makes clear that Respondent was given a

Because it is undisputed that based on the Florida Board's Final Order, Respondent's state license has been suspended and he ''is no longer authorized by State law to engage in the . . . dispensing of controlled substances'' in Florida, the State in which he is registered with the Agency, he is not entitled to maintain his registration. 21 U.S.C. 824(a)(3); *see also id.* section 802(21), *Blanton,* 43 FR at 27616. I will therefore order that his registration be revoked and that any pending application to renew or modify his registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BW1311997 issued to William H. Wyttenbach, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I further order that any application of William H. Wyttenbach, M.D., to renew or modify the above registration, be, and it hereby is, denied. This Order is effective May 22, 2017.

Dated: April 14, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–08013 Filed 4–20–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Solid Waste Disposal Act

On April 12, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States* v. *Municipality of Santa Isabel,* Civil Action No. 3:17–CV–01494.

The United States filed this action under the Solid Waste Disposal Act (SWDA). The United States' complaint seeks injunctive relief and civil penalties for the failure by the Municipality of Santa Isabel to comply with a U.S. Environmental Protection Agency administrative order on consent issued under the SWDA which addresses the closure of the Municipality's landfill. The consent decree requires the Municipality to, among other things, close its landfill, implement a recycling program, and pay a $20,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Municipality of Santa Isabel,* D.J. Ref. No. 90–7–1–10627. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $5.25.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–08029 Filed 4–20–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Radiation Sampling and Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Radiation Sampling and Exposure Records,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 22, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-1219-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Radiation Sampling and Exposure Records information collection. More specifically, regulations 30 CFR 57.5040 requires a mine operator to calculate and record individual exposures to radon daughters on Form MSHA–4000–9, Record of Individual Exposure to Radon Daughters, The calculations are based on the results of weekly sampling required by 30 CFR 57.5037. The operator must maintain records and submit them annually to the MSHA. The sampling and recordkeeping requirement alerts the mine operator and the MSHA to possible failure in the radon daughter control system and permits timely appropriate corrective action. Data submitted to the MSHA is intended to establish a means by which

hearing before the Board suspended his license. Appendix C, at 3.