

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Steven W. Easley, M.D.; Decision and Order**

On December 29, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven W. Easley, M.D. (Registrant), of Madison, Mississippi. The Show Cause Order proposed the revocation of Registrant's Certificates of Registration, the denial of any applications to renew or modify his registration, and the denial of any applications for any other DEA registration on the ground that he lacks "state authority to handle controlled substances" in Mississippi, the State in which he is registered with the DEA. Order to Show Cause, at 1–2 (citing 21 U.S.C. 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V, pursuant to Certificate of Registration FE2565779, at the address of 409 Tyler Holmes Drive, Winona, Mississippi. *Id.* at 1. The Order alleged that Registrant is also registered as a practitioner in schedules II through V, pursuant to Certificate of Registration No. FE2882226, at the address of 140 Burke-Calhoun City Road, Calhoun City, Mississippi. *Id.* The Order also alleged that Registrant is registered as a practitioner in schedules II through V, pursuant to Certificate of Registration No. FE2882062, at the address of 1100 Hwy 16 E, Carthage, Mississippi. *Id.* The Show Cause Order alleges that all three of these registrations expire on August 31, 2017. *Id.*

As substantive grounds for the proceeding, the Show Cause Order alleged that on March 3, 2016, the Mississippi State Board of Medical Licensure issued an "Order of Prohibition, prohibiting [Registrant] from practicing medicine," that the status of Registrant's "Mississippi medical license is 'expired,'" and that he is "currently without authority to practice medicine or handle controlled substances in the State of Mississippi, the [S]tate in which [he is] registered with the DEA." *Id.* at 2. Thus, based on his "lack of authority to [dispense] controlled substances in . . . Mississippi," the Order asserted that "DEA must revoke" his registrations. *Id.* (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

The Show Cause Order notified Registrant of his 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 consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2–3.

The Government states that on December 30, 2016, "[p]ersonnel" from the Jackson District Office of the New Orleans Field Division personally served the Order to Show Cause on Registrant. Government Request for Final Agency Action (RFFA), at 1–2 (citing Exhibit (GX) 4). Registrant signed a Form DEA–12, Receipt for Cash or Other Items, documenting service of the Order on him. GX 4 (stating "OTSC Documents" for the "Description of Items").

On March 14, 2017, the Government forwarded its Request for Final Agency Action and an evidentiary record to my Office. Therein, the Government represents that Registrant has neither requested a hearing nor "otherwise corresponded or communicated with DEA regarding" the Show Cause Order. RFFA, at 2. Based on the Government's representation and the record, I find that more than 30 days have passed since the Order to Show Cause was served on Registrant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. *Id.* at 2 (citing 21 CFR 1301.43(d)). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government. I make the following findings.

Findings of Fact

Registrant is a physician who held Mississippi Medical License No. 15463 until it expired on March 3, 2016. GX 5. In addition, the Mississippi State Board of Medical Licensure issued an Order of Prohibition to Registrant on March 3, 2016. GX 3 at 4. Under the Order, Registrant was "immediately prohibited from practicing medicine" until he undergoes a complete evaluation for impairment at an approved treatment facility "and thereafter is found capable of returning to the practice of medicine by the Mississippi State Board of Medical Licensure." *Id.* Registrant has offered no evidence that such a finding has been made, nor that he otherwise currently has authority to practice medicine or dispense controlled substances under the laws of Mississippi. Based on the above, I find that Registrant does not currently have authority under the laws

of Mississippi to dispense controlled substances.

Registrant is the holder of three DEA Certificates of Registration, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner. Pursuant to Registration No. FE2565779, Registrant is authorized to dispense controlled substances at the address of 409 Tyler Holmes Drive, Winona, Mississippi. GX 1 at 1. Pursuant to Registration No. FE2882226, Registrant is authorized to dispense controlled substances at the address of 140 Burke-Calhoun City Road, Calhoun City, Mississippi. *Id.* at 5. Pursuant to Registration No. FE2882062, Registrant is authorized to dispense controlled substances at the address of 1100 Hwy 16 E, Carthage, Mississippi. *Id.* at 3. All three registrations expire on August 31, 2017. *Id.*

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 Title 21, "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." With respect to a practitioner, 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 registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.").

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 [s]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 engages in professional practice. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *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 27616 (1978).

Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the [S]tate," *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Mississippi Board has employed summary process in suspending Registrant's state license. What is consequential is that Registrant is no longer currently authorized to dispense controlled substances in the State in which he is registered. I will therefore order that his registrations be revoked.

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 Certificates of Registration Nos. FE2565779, FE2882226, and FE2882062 issued to Steven W. Easley, M.D., be, and they hereby are, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any applications to renew or modify the above registrations be, and they hereby are, denied. This Order is effective immediately.¹

Dated: May 30, 2017.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16-6]

Patricia A. Newton, M.D.; Order

On review of the record, I noted that the expiration date of Respondent's Certificate of Registration was October 31, 2016. GX 1. I therefore took official notice of the Agency's registration records for Respondent to determine if she has filed a renewal application. According to the Agency's records, Respondent had not filed a renewal application whether timely or not.

Accordingly, on May 7, 2017, I issued an order directing the parties to address whether this case is now moot and provided the parties with seven calendar days to file their submissions. Order, at 1 (May 7, 2017). While the Government filed a response to my order, Respondent has not.

In its Response, the Government acknowledges that Respondent's registration has expired and states that "there is no record of any subsequent renewal application being filed for this registration." Certification of Registration History (May 15, 2017). Noting that there is neither a registration nor an application (whether timely or not) to act upon, the Government moves that this case be declared moot and that the Order to Show Cause be dismissed. Gov. Resp. to Order, at 1 (citing, *inter alia*, *Amy S. Benjamin*, 77 FR 72408 (2012); *Ronald J. Riegel*, 63 FR 67132, 67133 (1998)).

There being no showing of any collateral consequence which precludes a finding of mootness, I grant the Government's motion and dismiss the Order to Show Cause.

Dated: May 30, 2017.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17-14]

Emmanuel O. Nwaokocha, M.D.; Decision and Order

On December 5, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Emmanuel O. Nwaokocha, M.D. (Respondent), of Harwood Heights, Illinois. The Show

Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. FN5571864 on the ground that he "do[es] not have authority to handle controlled substances in the State of Illinois, the [S]tate in which [he is] registered with the DEA." Order to Show Cause, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. FN5571864, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 4740 N. Harlem Ave., Harwood Heights, Illinois. *Id.* The Order also alleged that this registration does not expire until October 31, 2018. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on March 15, 2016, the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation (IDFPR), "indefinitely suspended [his] license to practice medicine due to [his] conviction for Medicaid fraud," and he is therefore "without authority to handle controlled substances in the State of Illinois, the [S]tate in which [he is] registered with the DEA." *Id.* Based on his "lack of authority to [dispense] controlled substances in . . . Illinois," the Order asserted that "DEA must revoke" his registration. *Id.* at 2 (citing 21 U.S.C. 823(f) and 824(a)(3)).

The Show Cause Order notified Respondent of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 2-3.

On December 13, 2016, a Diversion Investigator from the Chicago Field Division personally handed a copy of the Order to Show Cause to the Respondent at his residence located at 9453 Lorel Ave., Skokie, Illinois 60077. Government's Submission of Evidence and Request for Summary Disposition (hereinafter, Govt. Mot.), Exhibit (hereinafter, GX) 1, at 1. Following service of the Show Cause Order, Respondent requested a hearing on the allegations. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On January 4, 2017, the CALJ ordered the Government to submit evidence to

¹ For the same reasons that led the Mississippi Board to summarily suspend Registrant's medical license, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.