

This order is effective September 15, 2010.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010-20242 Filed 8-13-10; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10-26]

Beverly P. Edwards, M.D.; Revocation of Registration

On January 21, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Beverly P. Edwards, M.D. (Respondent), of Indianapolis, Indiana. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BE8619667, and the denial of any pending applications to renew or modify her registration, on the ground that Respondent's "continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f)." Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4)).

The Show Cause Order specifically alleged that Respondent was prescribing controlled substances over the Internet based on "online questionnaires and/or webcam consultations and without first conducting an in person physical examination" and that she lacked a "legitimate medical purpose" and acted "outside the usual course of professional practice" in issuing the prescriptions in violation of 21 CFR 1306.04(a) and 21 U.S.C. 841(a)(1). *Id.* at 2. Next, the Order alleged that while Respondent is licensed to practice medicine in only the States of Indiana, California and New York, she was prescribing controlled substances to persons throughout the United States from her residence in Texas, where she is not licensed, and was engaged in the unauthorized practice of medicine in violation of the laws of Texas, as well as the various States where the patients resided. *Id.* (citations omitted). Relatedly, the Order alleged that Respondent was using her "DEA registration to prescribe controlled substances from locations outside of the State [Indiana] where [she is] registered with DEA, in violation of 21 CFR 1301.12(a) & (b)(3)." *Id.* Finally, the Show Cause Order alleged that Respondent was authorizing refills of

schedule II controlled substances in violation of 21 U.S.C. 829(a). *Id.*

Based on the above, I concluded that Respondent's continued registration during the pendency of the proceeding would "constitute[] an imminent danger to the public health and safety." *Id.* I therefore invoked my authority under 21 U.S.C. 824(d) and immediately suspended Respondent's registration. *Id.* at 2-3.

On January 25, 2010, Respondent requested a hearing on the allegations and the matter was placed on the docket of the Agency's Administrative Law Judges. Thereafter, on February 2, 2010, the Government moved for summary disposition contending that on January 29, 2010, the State of Indiana had summarily suspended Respondent's state medical license effective January 28, 2010, as well as her state controlled substances registration. Mot. for Summary Disp. at 1. The Government also noted that on February 2, the State had issued an amended order which summarily suspended her state medical license, which was also effective on January 28, 2010.¹ *Id.* As support for its motion, the Government attached copies of the various state suspension orders as well as other documents. Based on Respondent's lack of authority under state law to dispense controlled substances in Indiana, the State in which she holds her DEA registration, the Government requested that the ALJ issue a decision recommending that Respondent's registration be revoked. *Id.* at 2-3.

Thereafter, the ALJ issued an Order for Respondent's Response to the Government's Motion and gave Respondent until February 10, 2010 to file a response. Subsequently, on Respondent's motion, the ALJ granted her an extension until February 22 to file her pleading.

On February 18, Respondent filed her Response. Therein, Respondent did not dispute that she "currently lacks the authority to handle controlled substances in the State of Indiana, the jurisdiction in which until February 2, 2010 she was duly licensed." Response to Gov. Mot. for Summ. Disp. at 1. Respondent argued, however, that the Government's request was "premature" because the Medical Licensing Board of Indiana had not issued a final decision and that "any attempt to seek revocation at this time is without basis and premature." *Id.*

¹ Apparently, the amended summary suspension order was issued to extend the length of the suspension from 90 days (as provided in the initial order) "until the date of the final hearing in this matter." Compare Mot. for Summary Disp. Attachment 1, at 2, with Attachment 2, at 2.

On February 19, the ALJ issued her decision (also ALJ). Therein, the ALJ noted that the State of Indiana has suspended Respondent's medical license and that she had admitted "that she no longer has authority to handle controlled substances in Indiana." ALJ at 4. Noting that DEA does not have "authority under the Controlled Substances Act to maintain a controlled substances registration if the registrant is without state authority to handle controlled substances in the state in which she practices medicine," and that "revocation is * * * appropriate [even] when a state license has been suspended * * * with the possibility of future reinstatement," the ALJ concluded that there was no dispute over the material fact that Respondent "lacks authority to handle controlled substances in Indiana." ALJ at 5 (citations omitted). The ALJ thus held that "DEA lacks authority to continue * * * Respondent's DEA registration," granted the Government's motion, and recommended that Respondent's registration be revoked and that any pending applications be denied. *Id.* at 5-6.

While neither party would file exceptions to the ALJ's decision, on February 24, Respondent filed a motion to stay the ALJ's decision "until such time as the matter before the Medical Licensing Board of Indiana can be resolved." Motion to Stay Decision at 1. Respondent also noted that the State hearing had been set for March 25, 2010. *Id.* The Government opposed the motion.

On March 12, the ALJ denied the motion noting that Respondent had "offered no evidence suggesting that the circumstances have changed or that she currently has authority to handle controlled substances in Indiana." Order Denying Respondent's Motion to Stay Decision at 2. On March 19, the ALJ forwarded the record to me for final agency action.

Thereafter, the Government filed a motion to supplement the record. Therein, the Government noted that on March 30, 2010, the Medical Licensing Board of Indiana had issued a final order permanently revoking Respondent's medical license. Mot. to Supplement at 1. The Government attached a copy of the state order, which included extensive findings of fact and conclusions of law (many of which Respondent apparently stipulated to). See *In re Edwards*, No. 2009 MLB 0024 (Med. Lic. Bd. Ind., Mar 30, 2010) (final order). The findings established numerous instances in which Respondent, who "is only licensed to practice medicine in the States of

Indiana, New York and California,” *id.* at 1, and is only registered by DEA at two addresses in Indiana, *id.* at 2, issued controlled substance prescriptions (and frequently with multiple refills) to residents of Oklahoma, Colorado, Ohio, Illinois, Texas, Georgia, and North Carolina without having performed a physical examination of them. *Id.* at 2–13. Many of the prescriptions were for a combination drug containing 15 milligrams of hydrocodone and 80 milligrams of acetaminophen and were for as many as 360 tablets per each dispensing; other prescriptions were for hydrocodone/acetaminophen (10/325), oxycodone/acetaminophen (7.5/500) and Xanax. *See id.*

Moreover, the State found, with respect to one patient (Patient D), that his wife had called Respondent and told her that he had been using 30–40 pills a day and was in a treatment program for overusing opioids. *Id.* at 6–7. The State found that two weeks after being informed of this, Respondent nonetheless issued Patient D a prescription for 360 tablets of hydrocodone/acetaminophen (15/80) with five refills. *Id.* at 7. Moreover, Respondent issued Patient D additional prescriptions for 360 tablets of hydrocodone/acetaminophen (15/80) on two occasions thereafter, as well as other prescriptions for hydrocodone/acetaminophen (10/325). *Id.*

The State further found that Respondent’s conduct constituted multiple violations of Indiana law. *Id.* at 13–17. Among her violations were those of the State’s rules which prohibit prescribing a drug without “[a] documented patient evaluation, including history and physical evaluation adequate to establish diagnosis and identify underlying conditions or contraindications to the treatment recommended or provided,” 844 Ind. Admin. Code 5–3–2, and prescribing “any controlled substances to a person who the physician has never personally physically examined and diagnosed.” 844 Ind. Admin. Code 5–4–1(a); *see also In re Edwards*, at 16–17.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in “the jurisdiction in which he practices” in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means 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”). *See*

also id. § 823(f) (“The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.”). As these provisions make plain, possessing authority under State law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *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). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration “upon a finding that the registrant * * * has had his 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”).

As found above, the Medical Licensing Board has issued a final order “permanently revoke[ing]” Respondent’s Indiana medical license. *In re Edwards*, at 18. Respondent therefore lacks authority under Indiana law to dispense controlled substances in Indiana, the State in which she holds her DEA registration. Because Respondent is no longer entitled to maintain her DEA registration, her registration will be revoked and any pending applications will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I grant the Government’s motion to supplement the record. I order that DEA Certificate of Registration, BE8619667, issued to Beverly P. Edwards, M.D., be, and it hereby is, revoked. I further order that any pending applications of Beverly P. Edwards, M.D., to renew or modify her registration, be, and they hereby are, denied. This Order is effective September 15, 2010.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Peter W.S. Grigg, M.D.; Revocation of Registration

On January 2, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Peter W.S. Grigg, M.D. (Respondent), of Colorado Springs, Colorado. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, BG2107856, which authorized him to dispense controlled substances as a practitioner, and the denial of any pending application to renew or modify the registration on the ground that his “continued registration is inconsistent with the public interest.” Show Cause Order at 1.

More specifically, the Show Cause Order alleged that on four separate occasions beginning on October 17, 2008, and ending on December 5, 2008, Respondent violated Federal law by selling prescriptions for oxycodone, a schedule II controlled substance, to a police officer acting in an undercover capacity, which lacked a “legitimate medical purpose” and were “outside the usual course of professional practice.” *Id.* at 1–2 (citing 21 U.S.C. 841(a)(1) and 21 CFR 1306.04(a)). The Show Cause Order further alleged that on November 25, 2008, Respondent post-dated the oxycodone prescription and also “provided three capsules of MDMA, a schedule I controlled substance” and 60 tablets of oxycodone 10 mg. to the undercover officer, and that these distributions also lacked a legitimate medical purpose and were outside of the usual course of professional practice. *Id.* at 2. Finally, the Show Cause Order alleged that, on December 5, 2008, Respondent also unlawfully distributed four fentanyl 400 mg. tablets and one fentanyl transdermal patch 12 mcg./hr. to the undercover officer. *Id.*

Based on the above, I further found that Respondent’s continued registration during the pendency of the proceeding would “constitute[] an imminent danger to the public health and safety.” *Id.* I therefore immediately suspended Respondent’s registration. *Id.* (citing 21 U.S.C. 824(d) & 21 CFR 1301.36(e)). The Order also notified Respondent of his right to request a hearing on the allegations and the procedure for doing so. *Id.* at 3.

On January 8, 2009, a DEA Diversion Investigator personally served the Order to Show Cause and Immediate Suspension of Registration on