States Program created by Public Law 110–246, which amended the Act.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 19, 2014.

Brent Rhees,

Acting Regional Director, Upper Colorado Region.

[FR Doc. 2014–23595 Filed 10–10–14; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On October 7, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts in *United States* v. *Boston and Maine Corporation and Massachusetts Bay Transportation Authority,* Civil Action No. 1:14–cv–13804.

The proposed consent decree would resolve the claims of the United States for injunctive relief and recovery of response costs against the defendants under section 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') relating to Operable Unit 4 of the Iron Horse Park Superfund Site in North Billerica, Massachusetts.

The consent decree requires the defendants to pay $1,560,570 to the United States. The consent decree also requires the defendants to perform the remedial action described in the Environmental Protection Agency's Record of Decision for Operable Unit 4, dated July 25, 2011, and further described in EPA's Explanation of Significant Differences, dated July 22, 2014. In return, the United States agrees to resolve the defendants' liability under Sections 106 and 107(a) of CERCLA for defined matters related to Operable Unit 4.

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. *Boston and Maine Corporation and Massachusetts Bay Transportation Authority,* D.J. Ref. No. 90–11–3–90/4. All comments must be submitted no later than thirty (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 e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* 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 $98.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy without the exhibits, the cost is $13.75.

Maureen Katz,

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

[FR Doc. 2014–24306 Filed 10–10–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14–3]

Fiaz Afzal, M.D.; Decision And Order

On November 4, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Fiaz Afzal, M.D. (Respondent), of Kenner, Louisiana. ALJ Ex. 1. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration BA5142308, which authorizes him to dispense controlled substances as a practitioner, as well as the denial of any pending application to renew or modify the registration, on the ground that his ''registration is inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

As the basis for the proceeding, the Show Cause Order specifically alleged that ''[f]rom in or about 2006 through in or about March of 2012, [Respondent] issued prescriptions for controlled substances to fifteen patients outside the usual course of professional practice and for other than a legitimate medical purpose in violation of 21 CFR 1306.04(a).'' *Id.* The Order also alleged that the prescriptions Respondent ''issued to these patients also violated Louisiana . . . law pertaining to controlled substances.'' *Id.* at 1–2 (citing La. Rev. Sta. § 37:1285A(6) & (14); La. Rev. Stat. § 46:6921).

The Show Cause Order further alleged that a medical expert had reviewed the medical records of the fifteen patients and found that Respondent ''did not take a sufficient, or, in some cases, any objective medical history about the patient, that there was often a lack of diagnosis to support the continu[ed] prescribing of controlled substances, and that there was often no individual treatment plan.'' *Id.* at 2. The Order also alleged that the expert had found that Respondent ''failed to commence treatment with alternative treatments . . . rather than commenc[e] immediately with controlled substance prescriptions.'' *Id.*

On November 14, 2013, Respondent requested a hearing on the allegations. ALJ Ex. 2. The matter was placed on the docket of the Office of Administrative Law Judges, and assigned to ALJ Christopher McNeil, who conducted an evidentiary hearing on February 25, 2014 in New Orleans, Louisiana.

At the hearing, the Government submitted various exhibits including patient files for the record; it also presented the testimony of an expert. Respondent submitted no exhibits and presented no testimony. Both parties submitted post-hearing briefs.

Thereafter, the ALJ issued his Recommended Decision (R.D.). Therein, the ALJ found, *inter alia,* that the Government had proved that Respondent had issued controlled-substance prescriptions to fifteen patients ''in a manner that was not in the ordinary course of professional medical practice and was not based upon a legitimate medical justification.'' R.D. at 66–67. Based on this finding, the ALJ further concluded that the Government had demonstrated ''that Respondent's continued . . . registration would be inconsistent with the public interest.'' *Id.* at 67. The ALJ further found that Respondent ''ha[d] not provided substantial evidence that he has acknowledged any noncompliance with controlled substance laws, nor that he has

undertaken efforts to avoid such noncompliance in the future,'' and had thus ''failed to rebut the Government's *prima facie* case.'' *Id.* at 69. The ALJ thus recommended that I revoke Respondent's registration and deny any pending application to renew or modify his registration. *Id.*

Both parties filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to this Office for Final Agency Action.

While the matter was under review, the Government notified this Office that on August 18, 2014, the Louisiana State Board of Medical Examiners had issued a Decision and Order in the case it had brought against Respondent. Govt's Notification of, and Request to Add to the Record, the Decision and Order of the Louisiana State Board of Medical Examiners, at 1. Therein, the Government requested that the Board's Decision and Order be added to the record and provided a copy of the Decision and Order. *Id.* The Government further served a copy of its filing on Respondent, care of the South Louisiana Correction Center in Basile, Louisiana. *Id.* at 2.

Thereafter, Respondent submitted a letter to this Office opposing the Government's request to add the Louisiana Board's Decision to the record. *See* Opposition to Addition of Record, at 1. Therein, Respondent argues that he has requested both rehearing by the Board and judicial review of the Board's action and that the Decision and Order ''is NOT final yet so it is too early to add this to'' the record. *Id.* He further maintains that ''[s]everal issues regarding [the Government Expert's] testimony at [the] DEA hearing are unanswered and were excluded from [the] Louisiana State Board hearing which is UNFAIR for [his] cause.'' *Id.*

Having considered Respondent's contentions, I reject them. The Board's Decision and Order is clearly final as it sets forth findings of fact, conclusions of law, and orders the imposition of various sanctions. La. Rev. Stat. § 49:958 (''A final decision shall include findings of fact and conclusions of law.''). Also, the decision is dated and signed by the President of the Board, in the name of the Board, and has since been posted on the Board's disciplinary actions Web page. *See* La. Admin. Code 46:XLV.9927 (''The final decision of the board in an adjudication proceeding shall, if adverse to the respondent . . . be, in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.''). In short, the Decision and Order bears all of the hallmarks of a final decision and order.

As for his suggestion that the Decision and Order is not yet final because he has sought rehearing before the Board, Respondent has provided no evidence that the Board has stayed its decision. Nor does he cite to any provision of either Louisiana law or the Board's regulations which provides that the filing of a petition for rehearing renders the Board's decision non-final. As for his further suggestion that the Board's Decision and Order is not final because he has sought judicial review, under the Louisiana Administrative Procedure Act, ''[t]he filing of the petition does not itself stay enforcement of the agency decision.'' La. Rev. Stat. § 49:964.

Accordingly, I conclude that the Board's Decision and Order is final and will consider it as evidence in this matter. I make the following findings.

Findings

On some date not specified in its Decision, the Louisiana Board issued an Administrative Complaint to Respondent charging him with six different violations of Louisiana law and the Board's rules. *See In re Afzal,* No. 13–A–006 (La. Bd. Med. Exam'rs., Aug. 18, 2014). Of consequence here, the charges included the following:

> 3. Pursuant to La. Rev. Stat. § 37:1285(6), Prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefore or in other than a legal or legitimate manner;
>
> * * * * *
>
> 6. Board's Pain and Obesity Rules, Section 6921 of the Board's rules identify the provisions to which physicians should adhere in treating non-malignant chronic or intractable pain with controlled substances on a protracted basis (in excess of 12 weeks during any 12 month period). Among the items required by the rules, with which Respondent failed to satisfy with respect to this patient are the need to: perform an evaluation of the patient; arrive at a medical diagnosis; formulate a treatment plan; document the medical necessity for the use of more than one type or schedule of controlled substance in the patient's chart; and document and maintain accurate and complete records of history, physical and other examinations and evaluations as required by Section 6921 of the Board's rules.

Id. at 2 (citing La. Admin. Code 46:XLV.6921).

On June 16, 2014, the Board held a hearing at which Respondent was present. *Id.* at 1. After noting that the violations arose ''out of Respondent's treatment of ten patients as a physician licensed by the Board,'' the Board explained that the evidence ''in support of the complaint'' included the ''medical records pertaining to each patient'' and the expert testimony of two physicians. *Id.* at 2. Regarding the testimony of the experts, the Board made the following findings:

> Dr. Aultman,[1] Board Certified in Internal Medicine, testified as to [R]espondent's treatment of the ten patients listed in the complaint. She reviewed the medical records of each patient. She was of the opinion that Respondent, in each case, failed to perform a complete physical exam, received no medical history, did not formulate or document a medical diagnosis, failed to consider other remedies other than treatment with drugs, did not develop an individualized treatment plan and performed no periodic assessments of the patients, all in violation of the Board's Rules on Treatment of Chronic Pain. In addition, she was of the opinion that Respondent's treatment of these patients failed to satisfy the physicians' standard of care.
>
> Dr. Kathy Willis, an internist, testified that she reviewed all of these patients' charts and was of the same opinion as Dr. Aultman. . . . She also testified that a number of prescriptions were given by Respondent with no visit shown on the chart. She was of the opinion that Respondent distributed controlled substances with no medical basis for administering these drugs. She was also of the opinion that Respondent was in violation of the Board's Rules on Treatment of Chronic Pain and that his treatment of these patients did not meet the standard of care.

Id. at 2–3.

The Board thus found ''that Respondent failed to perform a complete physical exam or formulate or document a medical diagnosis and failed to formulate an individualized treatment plan for any of these patients.'' *Id.* at 3. The Board also found that Respondent ''received no medical history on these patients,'' ''did not consider other remedies . . . than treatment with drugs,'' and that he ''performed no periodic assessments of these patient's [sic] progress.'' *Id.*[2] The Board then found Respondent guilty of each of the charges, including that he violated the Board's Pain Rules, *see* La. Admin. Code 46:XLV.6921 & 6923, and the provision of the Louisiana Medical Practice Act prohibiting the ''[p]rescribing, dispensing, or administering [of] legally controlled substances or any dependency-inducing medication without legitimate medical justification therefor or in other than a legal or legitimate manner.'' La. Rev. Stat. § 37:1285(6).

Based on its findings, the Board suspended Respondent's medical

[1] Dr. Aultman also testified for the Government in the DEA proceeding. *See* Tr. 79–317.

[2] The Board also found that Respondent had been convicted in state court of thirty-five counts of Medicaid Fraud. *In re Afzal,* at 3.

license until the probation imposed by the state court in the criminal proceeding ''is terminated or for two years, whichever is longer.'' *In re Afzal,* at 4. The Board further ordered that upon his reinstatement, Respondent will be placed on probation subject to conditions which include that ''[f]or as long as he holds a license to practice medicine in Louisiana, [Respondent] shall not prescribe . . . any substance which may be classified, defined, enumerated or included in 21 CFR 1308.11–15 . . . as a Controlled Substance.'' *Id.* at 5. Respondent may, however, ''apply for the ability to prescribe controlled substances [in schedules] III–IV after a period of five (5) years from date of his reinstatement.'' *Id.*[3]

Discussion

The Public Interest Analysis

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. § 824(a)(4). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on *any one* or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* (emphasis added); *see also Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009). While I must consider each factor, I am ''not required to make findings as to all of the factors.'' *Volkman,* 567 F.3d at 222; *see also Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Here, I have considered all of the factors. For reasons explained below, I conclude that the Board's findings that Respondent violated Louisiana law, *see* La. Rev. Stat. § 37:1285(6), and the Board's pain rules, *see* La. Admin. Code 46:XLV.6921 & 6923, establish that Registrant has also violated the prescription requirement of the Controlled Substances Act. *See* 21 CFR 1306.04(a). I further conclude that Respondent ''has committed such acts'' as to render his registration ''inconsistent with the public interest.''[4] 21 U.S.C. 824(a)(4).

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

To effectuate the dual goals of conquering drug abuse and controlling both the legitimate and illegitimate traffic in controlled substances, ''Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.'' *Gonzales v. Raich,* 545 U.S. 1, 13 (2005). Consistent with the maintenance of the closed regulatory system, a controlled substance may only be dispensed upon a lawful prescription issued by a practitioner. *Carlos Gonzalez, M.D.,* 76 FR 63118, 63141 (2011).

Fundamental to the CSA's scheme is the Agency's longstanding regulation which states that ''[a] prescription for a controlled substance [is not] effective [unless it is] issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales v. Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)); *United States* v. *Alerre,* 430 F.3d 681, 691 (4th Cir. 2005), *cert. denied,* 574 U.S. 1113 (2006) (the prescription requirement stands as a proscription against doctors acting not ''as a healer[,] but as a seller of wares.'').

Under the CSA, it is fundamental that a practitioner must establish and maintain a legitimate doctor-patient relationship in order to act ''in the usual course of . . . professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Paul H. Volkman,* 73 FR 30629, 30642 (2008), *pet. for rev. denied,* 567 F.3d 215, 223–24 (6th Cir. 2009); *see also Moore,* 423 U.S. at 142–43 (noting that evidence established that the physician exceeded the bounds of professional practice, when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against . . . misuse and diversion''). The CSA, however, generally looks to state law to determine whether a doctor and patient have established a legitimate doctor-patient relationship. *Volkman,* 73 FR at 30642.

As found above, subsequent to the DEA hearing, the Louisiana Board also conducted a hearing after which the Board found ''that Respondent failed to perform a complete physical exam or formulate or document a medical diagnosis and failed to formulate an individualized treatment plan for any of these [ten] patients.'' *In re Afzahl,* at 3. The Board also found that Respondent ''received no medical history on these patients,'' ''did not consider other remedies . . . than treatment with drugs,'' and that he ''performed no periodic assessments of these patient's [sic] progress.'' *Id.*

The Board thus found Respondent guilty of having violated the Board's Pain Rules. *See* La. Admin. Code

[3] Based on the findings of the Louisiana Board's Decision and Order, I deem it unnecessary to make any findings based on this Agency's proceeding, or to address either party's Exceptions to the ALJ's Recommended Decision.

[4] As for factor one, while the Board has not made a formal recommendation to DEA as to whether Respondent should retain his registration, the State Board has suspended Respondent's medical license for at least two years and also provided that even upon his reinstatement, he is prohibited from prescribing controlled substances for at least five years thereafter. The consequence of the State's Order is discussed more fully below.

Regarding factor three, there is no evidence that Respondent has been convicted of an offense related to the manufacture, distribution or dispensing of controlled substances. However, as there are a number of reasons why a person may never be convicted of an offense falling under this factor, let alone be prosecuted for one, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and thus, it is not dispositive. *David A. Ruben,* 78 FR 38363, 38379 n. 35 (2013) (citing *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011)).

46:XLV.6921 & 6923. Most importantly, the Board found that Respondent violated the provision of the Louisiana Medical Practice Act which prohibits ''[p]rescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefor or in other than a legal or legitimate manner.'' La. Rev. Stat. § 37:1285(6).

Under the doctrine of collateral estoppel, the Board's findings of fact and conclusions of law are entitled to preclusive effect in this proceeding if Respondent had an adequate opportunity to litigate the issues in the state proceeding. *See Thomas Neuschatz,* 78 FR 76322, 76325 (2013) (citing *Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011)); *Univ. of Tenn.* v. *Elliot,* 478 U.S. 788, 797–98 (1986) (''When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata[.]'') (internal quotations and citations omitted).

Here, having reviewed the Board's Decision and applicable Louisiana law, I conclude that Respondent had an adequate opportunity to litigate (and did litigate) the issues raised in that proceeding. Under the Board's Rules of Procedure, Respondent was entitled to notice of the complaint, which was required to set forth ''the material facts and matters alleged and to be proven,'' including ''the facts constituting legal cause under law for administrative action against'' him. La. Admin. Code tit.46:XLV.§ 9903.B; *see also id.* § 9905. Moreover, while Respondent represented himself, he was entitled to ''be represented . . . by an attorney at law duly admitted to practice in any state.'' *Id.* § 9907.B. He was entitled to request subpoenas for both the testimony of witnesses and the production of documentary evidence. *Id.* § 9917.A. Also, at the hearing, he was entitled ''to present evidence on all issues of law and argument on all issues of law and policy involved, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for a full and true disclosure of the facts and disposition of the complaint.'' *Id.* § 9921.B. Finally, he was entitled to a written decision, which included factual findings and legal conclusions. *Id.* § 9927.A. I therefore find that Respondent had an adequate opportunity to litigate the issues raised in the Board proceeding and give preclusive effect to the Board's findings of fact and conclusions of law. *See Neuschatz,* 78 FR at 76325; *Dougherty,* 76 FR at 16830.

I further hold that Board's findings and legal conclusions support the conclusion that Respondent lacked a legitimate medical purpose and acted outside the usual course of professional practice in prescribing controlled substances to the ten patients who were the subject of the Board proceeding. *See* 21 CFR 1306.04(a). This conclusion is supported by both the Board's factual findings and its legal conclusion that Respondent violated La. Rev. Stat. § 37:1285(6).

As for its factual findings, the Board found ''that Respondent failed to perform a complete physical exam or formulate or document a medical diagnosis and failed to formulate an individualized treatment plan for any of these patients.'' *In re Afzahl,* at 3. It also found that Respondent ''received no medical history on these patients,'' ''did not consider other remedies . . . than treatment with drugs,'' and that he ''performed no periodic assessments of these patient's [sic] progress.'' *Id.*

Numerous decisions of the courts (including the Supreme Court in *Moore*) and this Agency have recognized that the prescribing of a controlled substance (and the continued prescribing of a controlled substance) under the following circumstances establishes that a physician lacked a legitimate medical purpose and acted outside of the usual course of professional practice and therefore violated the CSA:

- Without performing an appropriate physical examination,
- without utilizing appropriate diagnostic testing,
- failing to devise and document a written treatment plan,
- failing to periodically reassess the effectiveness of the treatment,
- continuing to prescribe controlled substances without pursuing alternative therapies,
- repeatedly and continually prescribing without referring the patient to appropriate specialists, and
- failing to keep and maintain records which contain adequate findings to support a diagnosis and the need to prescribe one or more medications.

See, e.g.; Paul H. Volkman, 73 FR 30630 (2008), *pet. for rev. denied,* 567 F.3d. 215 (6th Cir. 2009); *see also David A. Ruben,* 78 FR 38363 (2013); *Henri Wetselaar,*77 FR 57126 (2012); *Jack A. Danton,* 76 FR 60900 (2011); *George C. Aycock,* 74 FR 17529, 17544 (2009).

Accordingly, the Board's factual findings alone support the conclusion that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he prescribed to the ten patients who were at issue in the Board proceeding. *See* 21 CFR 1306.04(a).

Moreover, the Board specifically found that in his treatment of the ten patients, Respondent violated Section 37:1285(6) of the Louisiana Medical Practice Act. As discussed above, this provision prohibits ''[p]rescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefore or in other than a legal or legitimate manner.'' La. Rev. Stat. § 37:1285(6). This is not simply a malpractice standard. Rather, this standard is equivalent to the CSA's requirement that a controlled substance prescription ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Accordingly, I hold that the Board's findings of fact and conclusions of law establish that Respondent knowingly diverted controlled substances to the ten patients at issue in the State proceeding. I further conclude that the Board's Order establishes that Respondent has committed such acts as would render his registration ''inconsistent with the public interest.'' 21 CFR 1306.04(a). I further hold that Respondent's misconduct is egregious and warrants the revocation of his registration.

Loss of State Authority Grounds

Not only does the State Board's Order provide ground to revoke Respondent's registration under the public interest standard, it also supports revocation under the separate and independent ground that he lacks state authority. Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to revoke or suspend a registration ''upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . distribution or dispensing of controlled substances.'' With respect to a practitioner, DEA has repeatedly 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 James L. Hooper,* 76 FR 71371, 71372 (2011) (citing *Leonard F. Faymore,* 48 FR 32886, 32887 (1983)), *pet. for rev. denied, Hooper* v. *Holder,* 481 Fed.

Appx. 826, 828 (4th Cir. June 6, 2012) (unpublished).

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) (emphasis added).

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 if the practitioner is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine.[5] *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). It is of no consequence that Respondent has sought judicial review of the Board's decision. *See Ramsey,* 76 FR at 20036 (citing *Michael G. Dolin,* 65 FR 5661, 5662 (2000)). Under the CSA, all that matters is that Respondent is no longer currently authorized to dispense controlled substances in Louisiana. *Id.*

Here, the Louisiana Board has suspended Respondent's medical license for at least two years, and even in the event the Board reinstates his license, he will be prohibited from prescribing controlled substances for at least five years from the date of reinstatement. Accordingly, I conclude that Registrant is without authority under Louisiana law to handle controlled substances in the State in which he holds his DEA registration. Because Respondent no longer meets the CSA's requirement that he be currently authorized to dispense controlled substances in the State in which he holds his registration, I will order that his registration be revoked. *See Craig Bammer,* 73 FR 34327, 34329 (2008); *Richard Carino,* M.D., 72 FR 71955, 71956 (2007) (citing cases).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(3) & (4), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration BA5142308, issued to Fiaz Afzal, M.D., be, and it hereby is, revoked. I further order that any application of Fiaz Afzal, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effectively immediately.[6]

Dated: October 2, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–24373 Filed 10–10–14; 8:45 am]

BILLING CODE 4410–09–P

[5] It is unclear from the Board's order whether Respondent offered any evidence in the State proceeding that he acknowledges his misconduct and has undertaken remedial measures to prevent its recurrence, and given the outcome of the proceeding and the absence of any discussion in the Order, it seems unlikely that he did. Indeed, while in the DEA proceeding, Respondent faced similar allegations of unlawful prescribing, he declined to testify and offered no evidence at all. *See* R.D. at 61–62.

While under this Agency's precedents, evidence that a practitioner acknowledges his misconduct and has undertaken remedial measures may refute the Government's *prima facie* case when it seeks the revocation of a practitioner's registration on public interest grounds, it is unnecessary to determine whether Respondent offered such evidence in the board proceeding. This is so because Respondent's loss of his state authority provides a separate and independent ground for revoking his registration. And because under the CSA, possessing authority under state law to dispense controlled substances is a mandatory requirement for obtaining and maintaining a DEA practitioner's registration, it does not matter whether Respondent offered such evidence in the state board proceeding.

[6] Based on the extensive and egregious nature of the misconduct proved by the Government, I conclude that the public interest necessitates that this Order be effectively immediately. 21 CFR 1316.67.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative Payee Report, Representative Payee Report Short Form, and Physician's/Medical Officer's Statement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Representative Payee Report, Representative Payee Report Short Form, and Physician's/Medical Officer's Statement,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 13, 2014.

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=201405-1240-004* (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 sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, 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: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

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

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Representative Payee Report, Representative Payee Report Short Form, and Physician's/Medical Officer's Statement information collection. Benefits due a DOL black lung beneficiary may be paid to a representative payee on behalf of the beneficiary when he or she is unable to manage the benefits due to incapability or incompetence or because the beneficiary is a minor. The