

information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 19, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-23287 Filed 10-24-18; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 18-37]

Hisham M. Shawish, M.D.; Decision and Order

On July 12, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Hisham M. Shawish, M.D. (hereinafter, Respondent), of Erie, Pennsylvania. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Respondent's Certificate of Registration on the ground that he has "no state authority to handle controlled substances" in the Commonwealth of Pennsylvania, the State in which Respondent is registered with the DEA. *Id.* (citing 21 U.S.C. 824(a)(3)). It also proposes the denial of "any applications for renewal or modification of such registration and any applications for any other DEA registrations." OSC, at 1 (citing 21 U.S.C. 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Respondent holds DEA Certificate of Registration No. FS1974357 at the registered address

of 650 East Ave., Erie, Pennsylvania 16503, with a mailing address of 5572 Copper Dr., #102, Erie, Pennsylvania 16509. OSC, at 1. This registration, the OSC alleges, authorizes Respondent to dispense controlled substances in schedules II through V as a practitioner. *Id.* The Show Cause Order alleges that this registration expires on February 28, 2019. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Respondent is "currently without authority to practice medicine or handle controlled substances in the Commonwealth of Pennsylvania, the state in which . . . [he is] registered with DEA." *Id.* at 2. Specifically, the Show Cause Order alleges that the Commonwealth of Pennsylvania State Board of Medicine issued an Order of Temporary Suspension and Notice of Hearing (hereinafter, Temporary Suspension Order and Notice of Hearing) on April 25, 2018, and that this Order "suspended . . . [Respondent's] license to practice as a physician and surgeon." *Id.*

The Show Cause Order notifies Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notifies Respondent of the opportunity to submit a corrective action plan. OSC, at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated July 26, 2018, Respondent timely requested a hearing.¹ Hearing Request, at 1. According to the Hearing Request, "a Criminal Complaint was filed against . . . [Respondent] in Pennsylvania Magisterial District Court," which Respondent "categorically denies and is vigorously fighting." *Id.* Respondent's Hearing Request admits that his "license to practice medicine and surgery in Pennsylvania was temporarily placed in suspension, effective April 26, 2018." *Id.* It asserts that the "term of suspension is 180 days from April 26, 2018, at which time . . . [Respondent's] Pennsylvania license will revert to active unrestricted status by operation of law." *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ).

¹ The Hearing Request is dated and was received less than 30 days after the OSC's issuance. It is, thus, apparent that the Government's service of the OSC was sufficient and Respondent's request for a hearing was timely.

On July 27, 2018, the ALJ issued a Briefing Schedule for Lack of State Authority Allegations.

The Government timely complied with the Briefing Schedule by filing a Motion for Summary Disposition on August 10, 2018 (hereinafter, Summary Disposition Motion). The Summary Disposition Motion is "based on Respondent's lack of state authority to handle controlled substances." Summary Disposition Motion, at 1. The Government attached to its Summary Disposition Motion the Temporary Suspension Order and Notice of Hearing that the Commonwealth of Pennsylvania, Department of State, State Board of Medicine issued to Respondent. According to the Summary Disposition Motion, Respondent "is not entitled to hold a DEA registration" because he "does not have state authority to prescribe, administer, or dispense controlled substances in the Commonwealth of Pennsylvania." *Id.* at 3. The Government argues, citing Agency precedent, that "even if the period of suspension is temporary or if there is the potential that Respondent's state controlled substances privileges will be reinstated, summary disposition is warranted." *Id.* at 3-4.

Respondent timely filed its Reply in Opposition to the Government's Motion for Summary Disposition dated August 24, 2018 (hereinafter, Reply in Opposition). Attached to the Reply in Opposition are Docket Sheets indicating that the charges Respondent is facing are indecent assault of a person less than 13 years of age and corruption of minors dating as far back as 2014. Reply in Opposition, at Exh. 1.

Respondent argues that the Government's Summary Disposition Motion should be denied because "[t]he Government does not take into consideration the fact that . . . [Respondent's] Pennsylvania medical license is set to return to unrestricted status on October 25, 2018." *Id.* at 1. Since, he states, "his license will revert to active status as a matter of law in approximately two months, on October 25, 2018, . . . [i]t would be a waste of judicial resources, time, and expense to revoke . . . [his] DEA registration and then require . . . [him] to reapply for a DEA registration." *Id.* at 3. Respondent argues that the Agency precedent cited in the Summary Disposition Motion is "distinguishable, as it does not appear that in *any* of the cases a firm date was set on which each respective respondents' [sic] license was scheduled to be reinstated." *Id.* [emphasis in original]. Thus, Respondent urges the ALJ to "stay resolution" of the Summary Disposition Motion for 90 days and to

hold “a status conference and/or additional briefing to be scheduled following the trial of . . . [Respondent’s] criminal case and the reinstatement of his Pennsylvania medical license on October 25, 2018.” *Id.* at 1, 4.

The ALJ granted the Government’s Summary Disposition Motion and recommended that Respondent’s registration be revoked. Order Granting Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision dated August 27, 2018 (hereinafter, R.D.). The ALJ notes Respondent’s concession that his Pennsylvania license to practice medicine and surgery is temporarily suspended. R.D., at 3. The ALJ characterizes as “speculative” Respondent’s assertion that his license will revert to an active status on October 25, 2018. *Id.* at 4. The ALJ points out that, “immediately following the language” in the Temporary Suspension Order and Notice of Hearing setting the duration of the temporary suspension at “in no event longer than 180 days,” there is language ordering that “the ‘prosecuting attorney will commence a separate action to suspend, revoke or otherwise restrict Respondent’s license.’” *Id.* [emphasis in original]. The ALJ then reviews relevant Agency precedent and concludes that, “[T]he disposition of the . . . [Summary Disposition Motion] depends only on whether the Respondent currently possesses state authority to dispense controlled substances in Pennsylvania.” *Id.* at 6. Since Respondent conceded that the Pennsylvania State Board of Medicine temporarily suspended his medical license, the ALJ granted the Summary Disposition Motion and recommends revocation of Respondent’s registration. *Id.* at 6, 7.

By letter dated September 27, 2018, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advises that neither party filed exceptions and that the time period to do so has expired.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent’s DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FS1974357, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 650 East Ave., Erie, Pennsylvania 16503. Summary Disposition Motion, at

Certification of Registration History. Respondent’s registration expires on February 28, 2019. *Id.*

The Status of Respondent’s State License

The Pennsylvania State Board of Medicine ordered the temporary suspension of Respondent’s license to practice as a physician and surgeon on April 25, 2018. Reply in Opposition, Exh. 3, at 1. According to the Temporary Suspension Order and Notice of Hearing, the Prosecuting Attorney “alleged facts in the Petition, which, if taken as true, . . . make[] Respondent an immediate and clear danger to the public health and safety.” *Id.* It orders that a preliminary hearing be scheduled and conducted within 30 days to determine “whether there is a *prima facie* case to support the temporary suspension of the Respondent’s license and other authorizations to practice the profession issued by the Board.” *Id.* at 2. If a *prima facie* case is not established, Respondent’s license and other authorizations “will be immediately restored.” *Id.* If a *prima facie* case is established, “the temporary suspension shall remain in effect until vacated by the Board, but in no event longer than 180 days, unless otherwise ordered or agreed to by the participants.” *Id.* There is no evidence in the record concerning the preliminary hearing ordered in the Temporary Suspension Order and Notice of Hearing. The undisputed evidence in the record, independently submitted by both parties, is that Respondent’s Pennsylvania license to practice as a physician and surgeon is currently suspended. Although Respondent asserts unequivocally that his license will be “return[ed] to unrestricted status on October 25, 2018,” the evidence in the record, as the ALJ correctly explicates, is to the contrary. Reply in Opposition, at 1; R.D., at 4. Thus, I reject Respondent’s unequivocal assertion and agree with the ALJ’s analysis.

Accordingly, I find that Respondent currently is without authority to practice as a physician or surgeon in the Commonwealth of Pennsylvania, the State in which he is registered.

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 (hereinafter, CSA), “upon a finding that the registrant . . . has had his State license or registration 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, the DEA has also 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, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (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 CSA, the 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. *See, e.g., Hooper, supra*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988), *Blanton, supra*, 43 FR at 27,617.

Under longstanding Agency precedent, DEA revokes the registration of a practitioner who lacks State authority to handle controlled substances even when the practitioner’s State authority was suspended summarily or pending a final decision on the merits. *See, e.g., Bourne Pharmacy, Inc.*, 72 FR 18,273, 18,274 (2007). Similarly, the facts that the Pennsylvania State Board of Medicine temporarily suspended a respondent’s license and that the respondent may, some day, regain his license to practice as a physician and surgeon did not change the salient fact—the respondent was not currently authorized to handle controlled substances in the State in which he was registered. *Mehdi*

Nikparvarfard, M.D., 83 FR 14,503, 14,504 (2018).

Here, the undisputed evidence in the record is that Respondent's Pennsylvania license to practice as a physician and surgeon is currently suspended. There is no evidence in the record that Respondent holds any Pennsylvania registration, let alone as a practitioner, to handle controlled substances. As such, according to Pennsylvania law, Respondent currently does not have authority to handle controlled substances in Pennsylvania.

In sum, Respondent's Pennsylvania license to practice as a physician and surgeon is temporarily suspended. He currently lacks authority in Pennsylvania to practice medicine and to handle controlled substances. He is, therefore, not eligible for a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. 824(a)(3).

Order

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 824(a), I order that DEA Certificate of Registration No. FS1974357 issued to Hisham M. Shawish, M.D., be, and it hereby is, revoked. I further order that any pending application of Hisham M. Shawish, M.D., to renew or modify this registration, as well as any other pending application for him for registration in the Commonwealth of Pennsylvania, be, and it hereby is, denied. This Order is effective immediately.²

Dated: October 10, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018-23273 Filed 10-24-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service and Senior Level Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service and Senior Level Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2018 Senior Executive Service (SES) and Senior Level (SL) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES/SL performance appraisals, executive development plans, bonus recommendations and pay adjustments.

The PRBs will make recommendations regarding the final performance ratings to be assigned, SES/SL bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Mary A. Lamary, Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514-4350.

Lee J. Lofthus,
Assistant Attorney General for Administration.

2018 FEDERAL REGISTER

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² For the same reasons the Pennsylvania State Board of Medicine suspended Respondent's

Pennsylvania license to practice as a physician and surgeon, I find that the public interest necessitates

that this Order be effective immediately. 21 CFR 1316.67.