

where the State did not rely solely on the DEA order in suspending a practitioner's state license).

Respondent also apparently argues that revoking his registration would violate his right to Due Process because he has invoked his Fifth Amendment privilege and is "unable" to address the allegations. This argument would be unpersuasive even if the Agency was still seeking to revoke based on the allegations that he unlawfully distributed controlled substances.<sup>3</sup>

Moreover, Respondent ignores that under the CSA, the loss of state authority provides an independent ground to revoke and that the only issue now in dispute is whether Respondent holds state authority. Respondent was provided with a meaningful opportunity to refute the Government's evidence by showing that his state license had not been (or was no longer) suspended; such a showing would not require his testimony. That there is no such evidence (because the State's suspension order remains in effect) likewise does not deprive Respondent of Due Process.

Because Respondent remains without authority to dispense controlled substances under the laws of the State in which he practices medicine and is registered with the Agency, his registration will be revoked. Moreover, for the same reasons that I ordered the immediate suspension of Respondent's registration, I further hold that this Order be effective immediately.

#### 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 hereby order that DEA Certificate of Registration, BB2806480, issued to Joseph Baumstarck, M.D., be, and it hereby is, revoked. I further order that any pending application of Joseph Baumstarck, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective immediately.

<sup>3</sup>Due Process only requires that the Government provide a meaningful opportunity to test the Government's proof and respond to the allegations; a litigant's unwillingness to testify in a civil matter, because he fears incriminating himself, does not render a hearing opportunity unmeaningful in the constitutional sense. *Ohio Adult Parole Authority v. Woodward*, 523 U.S. at 272, 286 (1998). Indeed, the Supreme Court has even upheld the drawing of an adverse inference based on a respondent's refusal to testify in an administrative proceeding. *See Woodward*, 523 U.S. at (1998) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 316–18 (1976)); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043–44 (1984).

Dated: April 3, 2009.

**Michele M. Leonhart**,

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 08–10]

#### Scott Sandarg, D.M.D.; Revocation of Registration

On July 25, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Scott Sandarg, D.M.D. (Respondent), of Irvine, California. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BS6026525, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, and the denial of any pending applications to renew or modify the registration, on the ground that Respondent had committed numerous acts which were inconsistent with the public interest. Show Cause Order at 1.

The Show Cause Order specifically alleged that Respondent had unlawfully obtained controlled substances for his own use which included illicit methamphetamine, anabolic steroids, drugs containing hydrocodone, and several benzodiazepines including alprazolam, through various means including by engaging in prescription fraud and by obtaining the controlled substances over the internet from practitioners with whom he did not establish a valid doctor-patient relationship. *Id.* at 1–3. The Order also alleged that on two separate occasions, Respondent had been arrested; that the police found various controlled substances in his possession during lawful searches of his property; and that Respondent had subsequently pled guilty to various offenses under California law including one felony count of unlawful possession of a controlled substance in violation of Cal. Health & Safety Code § 11377(a), one misdemeanor count of unlawfully being under the influence of a controlled substance in violation of Cal. Health & Safety Code section 11550(a), and two misdemeanor counts related to firearms violations under Cal. Penal Code section 17(b). Show Cause Order at 2–3.

On September 11, 2007, a DEA Diversion Investigator attempted to serve the Order to Show Cause on Respondent by faxing it to him. On

November 9, 2007, Respondent requested a hearing on the allegations of the Show Cause Order, and the matter was assigned to an Administrative Law Judge (ALJ). Thereafter, the Government moved to terminate the proceeding on the ground that Respondent's request was out of time. Respondent opposed the motion, submitting the declarations of himself and his office manager, both of which asserted that the fax had included the cover sheet but not the Show Cause Order. Thereafter, the Government submitted a DI's declaration which maintained that Respondent's office manager had informed him that she had received the entire fax.

The ALJ denied the Government's motion reasoning that there was a factual dispute as to when Respondent had received the Show Cause Order. The ALJ then allowed the Government to file an interlocutory appeal. On May 12, 2008, I denied the appeal because there was a clear factual dispute as to whether Respondent had actually received the Show Cause Order on September 11, 2007, and the dispute could not be resolved without assessing the credibility of each party's witnesses.<sup>1</sup>

Thereafter, the Government moved to terminate the proceeding on the ground that on December 19, 2007, the California Board of Dental Examiners had adopted the proposed decision of a State Administrative Law Judge and revoked Respondent's State Dental Certificate with an effective date of January 21, 2008. Gov. Mot. for Summary Judgment 2–3. The Government argued that because Respondent is not authorized to handle controlled substances in the State in which he is registered with this Agency, he is not entitled to maintain his registration. *Id.*

Respondent's counsel opposed the motion arguing that he had filed for a writ of administrative mandamus in State court challenging the Board's order. Respondent's Resp. to ALJ's May 21, 2008 Memorandum to Counsel at 1. According to Respondent's counsel, the writ raised multiple claims of error on the part of the State ALJ, and were the court to find any of the claims meritorious, Respondent's license could be restored. *Id.* Respondent's counsel further argued that DEA's decision be stayed until the State proceeding was resolved. *Id.* The Government opposed Respondent's motion on the ground that it was speculative whether the State court would grant any relief, and that

<sup>1</sup> Respondent did not, however, dispute that he had subsequently been properly served.

this Agency has previously rejected similar arguments.

On July 10, 2008, the ALJ granted the Government's motion. ALJ at 6. The ALJ noted that no material facts were in dispute and that Respondent did not deny that he is currently not authorized under California law to handle controlled substances. *Id.* Noting that this Agency has consistently held that a practitioner may not maintain his registration if he lacks authority to handle controlled substances under the laws of the State in which he practices, the ALJ granted the motion and recommended that Respondent's registration be revoked and that any pending applications to renew or modify his registration be denied. *Id.* Thereafter, the ALJ forwarded the record to me for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's decision in its entirety. I find that Respondent holds DEA Certificate of Registration, BS6026529, which authorizes him to dispense controlled substances in schedules II through V at the registered location of 17655 Harvard Place, Suite F, Irvine, California. I further find that while the expiration date of the registration was February 28, 2007, Respondent submitted a timely renewal application and therefore his registration has remained in effect pending the issuance of this Final Order. *See* 5 U.S.C. 554(e).

I further find, however, that on December 19, 2007, the Dental Board of California ordered that Respondent's State Dental Certificate be revoked with an effective date of January 21, 2008.<sup>2</sup> Moreover, while it has been more than seven months since Respondent's challenge to the Dental Board's proceeding was heard in State court, Respondent has submitted no evidence to the Agency that the Board's revocation order has been set aside or stayed, and according to the Board's Web site, Respondent's Dental Certificate remains revoked.

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 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").

Here, there is no dispute over the material fact that Respondent's California Dental Certificate has been revoked and that Respondent lacks authority under California law to dispense control substances. Respondent is therefore not entitled to maintain his DEA registration.

#### 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 order that DEA Certificate of Registration, BS6026529, issued to Scott Sandarg, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Scott Sandarg, D.D.S., to renew or modify his registration, be, and it hereby is denied. This Order is effective May 15, 2009.

Dated: April 3, 2009.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 08-52]

#### George C. Aycock, M.D.; Revocation of Registration

On June 25, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to

Show Cause to George C. Aycock, M.D. (Respondent), of Sumter, South Carolina. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AA1071947, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending application to renew or modify the registration, on the grounds that: (1) Respondent's state controlled substance registrations had been suspended, and thus he no longer has authority to handle controlled substances under South Carolina law; and (2) Respondent had committed acts inconsistent with the public interest. ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

With respect to the second ground for the proceeding, the Show Cause Order alleged that Respondent had "repeatedly failed to establish a proper physician-patient relationship, as required by state and federal law, and ha[d] authorized controlled substance[] prescriptions without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a), 21 U.S.C. 841(a)(1), and S.C. Code Regs. 81-28." *Id.* More specifically, the Order alleged that Respondent issued controlled-substance prescriptions to persons he knew were exhibiting drug-seeking behavior, abusing controlled substances, or selling their drugs to others. *Id.* The Order further alleged that Respondent failed to obtain appropriate medical histories, perform appropriate physical examinations, discuss treatment options and create a therapeutic plan as required by state law.<sup>1</sup> *Id.* at 2.

Thereafter, the Government sought the Immediate Suspension of Respondent's registration based on information that on July 3, 2008, the State of South Carolina had reinstated Respondent's controlled-substance registration, and that on the same day, Respondent had issued to a person, who had traveled 250 miles to see him, prescriptions for sixty tablets of Oxycontin (80 mg.), 90 tablets of Lortab (10 mg.), and 90 tablets of Xanax (1 mg.). ALJ Ex. 2, at 1-2. The Order further alleged that this person had been receiving prescriptions from Respondent since July 2007, and that medical records which the Government had seized during the execution of a search warrant indicated that Respondent had not "perform[ed] an appropriate physical examination, ma[de] appropriate diagnoses or

<sup>2</sup> The State ALJ's decision concluded that the State had proved nine different causes to discipline Respondent, several of which related to his abuse of controlled substances. *In re Sandarg*, Proposed Dec. at 44-46, No. DBC 2006-36 (2007).

<sup>1</sup> On July 10, 2008, the Government served the Show Cause Order on Respondent. ALJ Ex. 3.