

Kamal Tiwari, 76 FR 71604, 71606 (2011) (citing cases).

Here, the evidence shows that Registrant's medical license has been suspended by the Texas Medical Board. I therefore hold that Registrant no longer holds authority under the laws of Texas, the State in which he is registered, to dispense controlled substances and that therefore, he is not entitled to maintain his DEA registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FG1729699 issued to Ronald A. Green, M.D., be, and it hereby is, revoked. I further order that any application of Ronald A. Green, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.³

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Cody Laboratories, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 17, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 17, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrisette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement

Administration, Attention: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152. Comments and request for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on May 8, 2015, Cody Laboratories, Inc., 601 Yellowstone Avenue, Steve Hartman, Vice President of Compliance, Cody, Wyoming 82414-9321 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Phenylacetone (8501)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with the DEA as a manufacturer of several controlled substances that are manufactured from poppy straw concentrate.

The company plans to import an intermediate form of tapentadol (9780), to bulk manufacturer tapentadol for distribution to its customers.

Dated: August 10, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14-24]

Nicholas Nardacci, M.D.; Decision and Order

On July 15, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nicholas J. Nardacci, M.D. (Respondent), of Albuquerque, New Mexico. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AN9444592, on the ground that he lacks authority to handle controlled substances in New Mexico, the State in which he is registered with DEA. Show Cause Order, at 1 (citing 21 U.S.C. 823(f) & 824(a)(3)).

The Show Cause Order specifically alleged that on August 20, 2013, the New Mexico Medical Board (the Board) issued a Decision and Order suspending Respondent's medical license, based on its finding that since 2010, Respondent had prescribed medical marijuana for numerous persons by certifying to the New Mexico Department of Health that he was each person's medical provider, without first establishing that he was the primary caregiver for any of those persons or otherwise first establishing a physician-patient relationship as required under NMSA §§ 26-2B-1 *et seq.* *Id.* at 1. Based on the State's suspension of his medical license, the Order alleged that Respondent was without authority to handle controlled substances in New Mexico, the State in which he is registered with DEA, and thus, he is not entitled to maintain his registration. *Id.* (citing 21 U.S.C. 801(21), 823(f) and 824(a)(3)).¹

On or about August 4, 2014, the Show Cause Order was served on Respondent, and on September 2, 2014, Respondent filed a letter with the Office of Administrative Law Judges. GX 4. Therein, Respondent acknowledged that he had been served with the Show Cause Order and requested additional time in which to respond to the Order so that he could retain a lawyer; however, he did not request a hearing. *Id.* Respondent also asserted that on August 12, 2014, the Board had issued a Return to Work Order and therefore, his state medical license was now active. *Id.* The matter was then assigned

³ Based on the findings of fact and conclusions of law which led the TMB to conclude that Registrant's "continuation in the practice of medicine would constitute a continuing threat to public welfare," GX 3, at 3; I conclude that the public interest requires that this Order be effective immediately. *See* 21 CFR 1316.67.

¹ The Show Cause Order also notified Respondent 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. Show Cause Order, at 2 (citing 21 CFR 1301.43).

to an Administrative Law Judge, who ordered the Government to respond to Respondent's statement that "he currently has an active license." GX 5, at 1.

In the meantime, on September 3, 2014, the New Mexico Medical Board notified a DEA Diversion Investigator in the Albuquerque District Office that the Board's August 12, 2014 Order did not place any formal restrictions on Respondent's authority to prescribe controlled substances, explaining that his prescribing was not at issue in the Board's case. GX 3. Thereafter, on September 9, 2014, the Government filed a motion for Termination of Proceedings, stating that the allegations of the Show Cause Order were now moot and that "these developments apparently obviate the need for any further proceedings." GX 5, at 2.

Noting that Respondent had not requested a hearing, the ALJ concluded that "the only jurisdictional authority" she possessed was to determine whether to grant Respondent's request for "a reasonable extension of the time allowed for response to an Order to Show Cause." Order Denying Respondent's Motion For Extension of Time, at 2 (quoting 21 CFR 1316.47). The ALJ thus concluded that she did not have jurisdiction to rule on the Government's motion. *Id.* The ALJ then denied Respondent's motion, "with the understanding that the Government will take the necessary steps to properly dismiss the" Show Cause Order. *Id.*

On February 3, 2015, the Government submitted a "Request [f]or Dismissal [o]f Order [t]o Show Cause." Therein, the Government states that although Respondent was without state authority to handle controlled substances on July 15, 2014, when the Show Cause Order was issued, the New Mexico Medical Board has since lifted the suspension of his medical license and Respondent currently has no restrictions on his state authority to handle controlled substances.² *Id.* at 2. Because the Show Cause Order sought revocation of Respondent's registration solely on the basis of his lack of state authority to handle controlled substances, and that ground for revocation no longer exists, the Government requests that I dismiss the Order. *Id.* at 2.

Based on my review of the Board's Order, as well as the Board's September 3, 2014 letter to the Diversion Investigator, I find that Respondent is currently authorized to dispense controlled substances in New Mexico,

the State in which he is registered with this Agency. Because Respondent's loss of state authority was the sole basis for the Show Cause Order and this ground no longer exists, I conclude that this case is now moot and will order that the Show Cause Order be dismissed.

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 the Order to Show Cause issued to Nicholas J. Nardacci, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15-19]

Jeffrey S. Holverson, M.D.; Decision and Order

On March 27, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Jeffrey S. Holverson, M.D. (Respondent), of Salt Lake City, Utah. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances as a practitioner, solely on the ground that he does "not have authority to handle controlled substances in . . . Utah, the [S]tate in which [he is] registered with the DEA." Show Cause Order, at 1.

As the factual basis for the proposed action, the Show Cause Order alleged that on January 8, 2015, Respondent "entered into a 'Non-Disciplinary Limitation Stipulation and Order'" with the Utah Division of Occupational and Professional Licensing, pursuant to which he agreed to the suspension of his authority to dispense controlled substances. *Id.* The Order further alleged that "[t]his suspension remains in effect" and that "[c]onsequently . . . DEA must revoke [his] registration." *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Following service of the Show Cause Order, Respondent requested a hearing on the allegations. Order Granting the Gov't Mot. for Summ. Disp. (hereinafter, ALJ Order), at 2. Thereafter, the Government moved for summary disposition on the ground that by virtue

of the Non-Disciplinary Limitation Stipulation and Order, which Respondent entered into on January 8, 2015, he "does not have authority to . . . dispense controlled substances" under Utah law, and that notwithstanding that the "suspension may or may not continue" past the 180-day period set forth in the State's Order, "DEA final orders are clear and unequivocal that [Respondent's] registration should be revoked." Gov't Mot. for Summ. Disp., at 5. While in his hearing request, Respondent had objected to the proposed revocation of his registration, he did not respond to the Government's motion. ALJ Order, at 2-3. The ALJ, finding it undisputed that "the limitation on [Respondent's] ability to prescribe controlled substances will remain in effect until at least July 7, 2015," and noting that "there is no guarantee that his authority . . . will be restored after 180 days," granted the Government's motion and recommended that Respondent's registration be revoked and that any pending applications to renew or modify his registration be denied. *Id.* at 4-6.

Neither party filed exceptions to the ALJ's Order. Thereafter, on June 9, 2015, the ALJ forwarded the record to my Office for Final Agency Action. However, upon review of the record, it was noted that the Non-Disciplinary Limitation Stipulation was due to expire on or about July 7, 2015. Accordingly, on July 27, 2015, I directed the parties to address whether the order remained in effect and if the order no longer was in effect, "to address whether Respondent currently possesses authority to dispense controlled substances under the laws of the State of Utah." Order of the Administrator, at 1 (July 27, 2015).

On August 5, 2015, the Government filed its Response to my Order. Therein, the Government states that "[t]he time of the Suspension Order has now expired, and DEA has been informed by [the Division of Professional Licensing] that at this time the Suspension order has not been extended." Gov't Response, at 2. The Government thus acknowledges that "at this time Respondent is allowed to dispense controlled substances under the laws of the State of Utah." *Id.* The Government thus requests that the Show Cause Order be dismissed. *Id.*

Because the Show Cause Order was based solely on Respondent's lack of authority under state law to dispense controlled substances and that factual predicate no longer exists, I grant the Government's request and will dismiss the Show Cause Order.

² The Government submitted a copy of the Board's Order with its Request for Dismissal. See GX 2.