INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–567–569 and 731–TA–1343–1345 (Preliminary)]

Silicon Metal from Australia, Brazil, Kazakhstan, and Norway

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Australia, Brazil, and Norway, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold at less-than-fair-value (''LTFV'') and imports of silicon metal alleged to be subsidized by the governments of Australia, Brazil, and Kazakhstan.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On March 8, 2017, Globe Specialty Metals, Inc., Beverly, Ohio filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of silicon metal from Australia, Brazil, and Kazakhstan, and LTFV imports of silicon metal from Australia, Brazil, and Norway. Accordingly, effective March 8, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation Nos. 701–TA–567–569 and antidumping duty investigation Nos. 731–TA–1343–1345 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 14, 2017 (82 FR 16353). The conference was held in Washington, DC, on March 29, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on April 24, 2017. The views of the Commission are contained in USITC Publication 4685 (May 2017), entitled *Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Investigation Nos. 701–TA–567–569 and 731–TA–1343–1345 (Preliminary).*

By order of the Commission.

Issued: April 24, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–08535 Filed 4–26–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–4]

Robert Clark Maiocco, M.D.; Decision and Order

On September 22, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to Robert Clark Maiocco, M.D. (Respondent), of Denver, Colorado. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. AM2281688, and the denial of any applications to renew or modify his registration, as well as the denial of ''any applications for any other DEA registrations,'' on the ground that he has ''no state authority to handle controlled substances.'' Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3) and 823(a)(3)).[1]

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered ''as a practitioner in Schedules II through V'' under the above registration, at the location of ''Colorado Lipidology Associates, 633 17th Street, Ste. 100, Denver, Co.'' *Id.* The Order alleges that Respondent's registration does not expire until January 31, 2019. *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that ''[o]n July 19, 2016, the Colorado Medical Board suspended [Respondent's] medical license.'' *Id.* at 2. The Show Cause Order then alleged that Respondent is ''currently without authority to practice medicine or handle controlled substances in the State of Colorado, the [S]tate in which [he is] registered with'' DEA, and that as a consequence, his registration is subject to revocation.[2]

Following service of the Show Cause Order, Respondent requested a hearing. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to ALJ Charles Wm. Dorman who issued an order directing the Government to file evidence supporting the allegation and ''any motion for summary disposition'' by 2 p.m. on November 7, 2016. Briefing Schedule For Lack Of State Authority Allegations (Briefing Schedule), at 1. In

[1] As for the citation to 21 U.S.C. 823(a)(3), this provision is a public interest factor applicable to applicants for registration to manufacture schedule I and II controlled substances, which directs the Agency to consider the ''promotion of technical advances in the art of manufacturing these substances and the development of new substances.'' This provision is not applicable to this case, which involves a practitioner registered under section 823(f).

While the Government also proposes the denial of ''any applications for any other DEA registrations,'' because this proceeding is based solely on Respondent's lack of state authority in Colorado, the Agency's authority to deny an application is limited to an application for a registration in Colorado.

[2] The Show Cause Order also notified Respondent of his right to request a hearing or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. Show Cause Order, at 2. Also, the Show Cause Order notified Respondent of his right to submit a Corrective Action Plan. 21 U.S.C. 824(c)(2)(C).

the same order, the ALJ directed Respondent to file any reply to the Government's motion by 2 p.m. on November 18, 2016. Noting that in his hearing request, Respondent had sought to hold the proceeding in abeyance ''pending the resolution of the Colorado [Board] matter either via a negotiated disposition or a final agency order following the hearing . . . set for June 26–30, 2017,'' Resp. Hrng. Req., at 2; the ALJ ordered that ''if the Respondent wishes to formally request a continuance in this case, he must do so in a written motion for continuance.'' Briefing Schedule, at 1.

On November 3, 2016, Respondent moved for a continuance of all proceedings in the matter until and including January 3, 2017. Resp.'s Mot. for Continuance, at 1. As grounds for the continuance, Respondent argued that the suspension of his state license was not a final agency action, that the state administrative case was currently being litigated, that the parties were engaged in active negotiations to resolve the matter ''via a stipulated disposition that would allow [him] to return to the active practice of medicine,'' and that ''such a negotiated disposition may be reached within the next 45 to 60 days.'' *Id.* at 2. Upon receipt of the motion, the ALJ ordered the Government to file a response by 2 p.m. on November 10, 2016; he also extended the deadline for the Government to file its summary disposition motion until November 18, 2016 and for Respondent to file his reply until November 30, 2016. Order for Government's Response to Respondent's Motion to Stay Proceedings, at 1.

On November 10, 2016, the Government filed a pleading which combined its Opposition to Respondent's Motion for Continuance and its Motion for Summary Disposition. Gov.'s Opp. to Resp.'s Mot. to Stay Proceedings and Gov.'s Mot. for Summ. Disp. (hereinafter, Mot. for Summ. Disp.), at 1. With respect to Respondent's stay motion, the Government suggested that Respondent's statements regarding the timing of a negotiated resolution of the state matter was speculative. *Id.* at 4. The Government then cited Agency precedent to argue that ''even if the period of suspension is temporary or if there is the potential that Respondent's state controlled substance privileges will be reinstated, summary disposition is warranted because 'revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement.' '' *Id.* (quoting *Roger A. Rodriguez,* 70 FR 33206, 33207 (2005) (other citations omitted)). The Government thus maintained that Respondent's Motion for Continuance should be denied. *Id.*

As for the Government's Motion for Summary Disposition, it argued that based on the Order of Suspension issued to Respondent by the Colorado Medical Board, he does not have ''authority to prescribe, administer, or dispense controlled substances in the State of Colorado.'' Mot. for Summ. Disp., at 3. The Government argued that there is no dispute as to this material fact, *id.* at 2, and that ''[a]bsent authority by the State of Colorado to dispense controlled substances, Respondent is not authorized to possess a DEA registration in that state.'' *Id.* at 3 (citing 21 U.S.C. 802(21), 823(f), 824(a)(3), and *Layfe Robert Anthony,* 67 FR 35582 (2002)). The Government further argued that ''DEA does not have statutory authority to maintain a registration if the registrant is without state authority to handle controlled substances,'' and that therefore, Respondent's registration should be revoked. *Id.* (citation omitted).

On November 14, 2016, the ALJ denied Respondent's Motion for Continuance. Order Denying the Respondent's Motion for Continuance, at 1. The ALJ's explained that ''[i]t is settled DEA precedent 'that the existence of other proceedings in which Respondent is involved is not a basis upon which to justify a stay of DEA administrative enforcement proceedings.'' *Id.* (quoting *James Alvin Chaney,* 80 FR 57391, 57393 (2015)).

On November 30, 2016, Respondent submitted a pleading captioned: ''Respondent's Motion For Extension Of Time In Which To Submit His Response To The Government's Motion for Summary Disposition And, In The Alternative, His Response To The Government's Motion For Summary Disposition'' (hereinafter, Extension Mot.). Therein, Respondent represented that he had ''submitted a proposed Stipulation and Final Agency Order to'' the Colorado Board, ''which, if agreed to by the [Board], would result in the lifting of the suspension and the restoration of'' his controlled substance dispensing authority in Colorado. Extension Mot., at 1–2. Respondent further represented that the proposed Stipulation was to be considered by the Board at its December 15, 2016 meeting and expressed his optimism that the Board would accept the Stipulation. *Id.* at 2. Further noting that the Board's decision would be dispositive of this matter either way, Respondent sought an extension of the time until December 20, 2016 to file his response to the Government's pending Motion for Summary Disposition. *Id.*

Citing ''the interest of administrative/judicial economy,'' the ALJ granted Respondent's motion and ordered Respondent to file his evidence of reinstatement and his Response to the Motion for Summary Disposition by December 20, 2016. Order Granting Respondent's Motion for Extension in Which to Submit His Response to the Government's Mot. for Summary Disposition, at 2. On December 20, 2016, Respondent filed his Response and a Status Report. Response to Gov. Mot. for Summ. Disp. and Status Rep., at 1. Therein, Respondent advised that ''the parties in [the Board's proceeding] were unable to reach a resolution and [that] the matter will proceed to a hearing'' scheduled for June 26 through June 30, 2017. *Id.* Respondent further acknowledged that his medical license had not been reinstated. *Id.*

The same day, the ALJ granted the Government's Motion. The ALJ noted that ''[t]o maintain a DEA registration, a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which the practitioner is registered.'' R.D. at 3 (citing 21 U.S.C. 802(21), 823(f)). Finding that there was no dispute over the material fact that ''Respondent lacks state authorization to handle controlled substances in Colorado,'' the State in which he is registered with DEA, the ALJ granted the Government's Motion and recommended that Respondent's registration be revoked. *Id.* at 3–4.

Neither party filed exceptions to the Recommended Decision. Thereafter, the ALJ forwarded the record to my Office for final agency action. Having considered the record, I adopt the ALJ's factual finding, legal conclusions and recommended order. I make the following factual findings.

Findings of Fact

Pursuant to 5 U.S.C. 556(e), I take official notice of Respondent's registration record with the Agency. According to the record, Respondent is the holder of Certificate of Registration No. AM2281688, pursuant to which he is authorized to dispense controlled substances in schedules II through V as practitioner, at the registered address of Colorado Lipidology Associates, 633 17th Street, Suite 100, Denver, Colorado. Respondent's registration does not expire until January 31, 2019.[3] Accordingly, I find that Respondent has

[3] Respondent may refute these findings (as well as any other finding based on my taking of official notice) by filing a properly supported motion for reconsideration no later than 10 business days from the date of this Order.

an active registration and that the Agency has jurisdiction.[4]

Respondent is also the holder of license number DR–36651, pursuant to which he is authorized to practice medicine as a physician by the Medical Board of Colorado. Mot. for Summ. Disp., Ex. 1, at 1. However, effective on July 19, 2016, the Board suspended Respondent's medical license ''pending proceedings for suspension or revocation.'' *Id.* at 2. According to the online records of the Colorado Division of Professions and Occupations, Respondent's suspension remains in effect as of the date of this Decision and Order. *See* 5 U.S.C. 556(e).

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 (CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Moreover, DEA has 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,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

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 ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Colorado Medical Board has employed summary process in suspending Registrant's state license and that Respondent may prevail at the hearing schedule for late June.

Here, there is no dispute over the material fact that Respondent is no longer currently authorized to dispense controlled substances in Colorado, the State in which he is registered. Accordingly, I adopt the ALJ's recommendation that Respondent's registration be revoked.

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 DEA Certificate of Registration AM2281688, issued to Robert Clark Maiocco, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Robert C. Maiocco, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: April 18, 2017.

Chuck Rosenberg,

Acting Administrator.

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[4] I note that the Government did not submit any evidence regarding the status of Respondent's registration with its Motion for Summary Disposition. DEA's regulations do not require responsive pleading to the allegations of a Show Cause Order. Thus, the failure of a respondent to refute an allegation in his hearing request does not constitute an admission of the allegation and the Government maintains the burden of providing evidence establishing the Agency's jurisdiction as part of its Motion. The Agency has also noted in several decisions that even in those matters which are adjudicated on summary disposition, the ALJ is obligated to make findings as to the Agency's jurisdiction. *See James Alvin Chaney,* 80 FR 57391, 57391 n.1 (2015); *Sharad C. Patel,* 80 FR 28693, 28694 n.3 (2015).

[5] For the same reasons that led the Colorado Board to summarily suspend Registrant's medical license, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David D. Moon, D.O.; Decision and Order

On December 8, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to David D. Moon, D.O. (hereinafter, Registrant), the holder of Certificates of Registration Nos. M9879024, in Tulsa, Oklahoma, and BM2782692, in Las Vegas, Nevada, authorizing him to prescribe controlled substances in Schedules II through V.[1] GX 4. The Show Cause Order proposed the revocation of his Certificates of Registration and the denial of any pending application for renewal or modification of Registrant's registrations on the grounds that: (1) Registrant does not have authority to dispense controlled substances in the States in which he is registered and (2) he has committed acts which render his registrations ''inconsistent with the public interest.'' [2] *Id.* at 1 (citing 21 U.S.C. 824(a)(3) and (4)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that both of Registrant's registrations expire on January 31, 2018. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order alleged that on June 18, 2015, the Oklahoma State Board of Osteopathic Examiners revoked his Oklahoma osteopathic license, and that on August 11, 2015, the Nevada State Board of Osteopathic Medicine revoked his Nevada osteopathic license, which resulted in the status of his Nevada State Board of Pharmacy license becoming ''inactive.'' *Id.* at 2. Thus, due to the actions of the two Boards, the Registrant is without authority to handle controlled substances in the States in which he is registered with DEA.

The Show Cause Order alleged that on April 17, 2013, Registrant was arrested at McCarran International Airport while proceeding through a Transportation Security Administration checkpoint. *Id.* It further alleged that law enforcement officers found in his carry-on baggage drugs in pill bottles labeled for other people, drugs in unlabeled pill bottles, and loose drugs. *Id.* Based on the airport

[1] The Registrant is also known in the Government's records as ''David DeWayne Moon.'' Government Exhibit (hereinafter, GX) 13 and 14.

[2] The Show Cause Order also proposed the denial of any applications by Registrant for any other DEA registrations.