

Notwithstanding the Respondents' request that DEA withhold its decision regarding her Certificate of Registration pending completion of a Board hearing, there is no evidence before the Deputy Administrator that the Board has taken any action to lift the current suspension of the Respondent's medical license.

In her Opinion and Recommended Ruling, Judge Randall found that the Respondent is without State authority to handle controlled substances. The Deputy Administrator adopts the finding of the Administrative Law Judge.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Muttaiya Darmarajeh*, M.D.; 66 FR 52936 (2001); *Dominick A. Ricci*, M.D., 58 FR 51104 (1993); *Bobby Watts*, M.D., 53 FR 11919 (1988).

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondents are currently without authorization to handle controlled substances in Louisiana. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Gilbert Ross*, M.D., 61 FR 8664 (1996); *Philip E. Kirk*, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC3404681, issued to Jacqueline Cleggett-Lucas, M.D. and JCL Enterprises, L.L.C. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03-11435 Filed 5-7-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-52]

Francis A. Goswitz, M.D.; Revocation of Registration

On June 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francis A. Goswitz, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, AG0387604, pursuant to 21 U.S.C. 824(a). The Order to Show Cause alleged, *inter alia*, that the Respondent's Tennessee State medical license had been suspended.

By letter dated July 19, 2002, the Respondent, through legal counsel, requested a hearing in the matter. In the request for hearing, the Respondent's legal counsel acknowledged that the Respondent's medical license had been suspended by the Tennessee Department of Health, but argued that the matter "is pending, and a hearing on the merits has not yet been held."

On August 13, 2002, the Government filed a Motion for Summary Disposition and Stay of Proceedings, arguing that as of August 6, 2002, the Respondent's medical license remained suspended. On August 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel staying the filing of prehearing statements and providing the Respondent until September 4, 2002, to respond to the Government's motion. However, the Respondent did not file a response to the motion.

On October 8, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision) where she granted the Government's motion for summary disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Tennessee. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA Certificate of Registration be revoked and any pending applications for modification or renewal of that registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 12, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator for a final agency decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondent is currently registered as a practitioner under DEA Certificate of Registration AG0387604. On February 14, 2002, the Tennessee Board of Medical Examiners (Board) issued an Order of Summary Suspension with respect to the Respondent's Tennessee medical license. The Board's action was based in part upon a finding that the Respondent engaged in inappropriate sexual conduct with a patient, and subsequently attempted to influence her testimony by offering the patient money. The Board also found that in September 2001, the Respondent dispensed to a patient and her husband the controlled substances hydrocodone and alprazolam, for no legitimate medical purpose.

In its Motion for Summary Disposition, the Government attached a declaration from the Administrator of the Board, who asserted that the Respondent's Tennessee medical license remains suspended. Judge Bittner agreed with the Government that the Respondent is without state authority to handle controlled substances in Tennessee, and accordingly, granted the Government's Motion for Summary Disposition.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Muttaiya Darmarajeh*, M.D., 66 FR 52936 (2001); *Dominick A. Ricci*, M.D., 58 FR 51104 (1993); *Bobby Watts*, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Tennessee, the state where he currently holds a DEA registration. Therefore, he is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his Certificate of Registration should be revoked based upon allegations of his improper dispensing of controlled substances and other public interest grounds alleged in the Order to Show Cause. See *Samuel Silas Jackson*, D.D.D., 67 FR 65145 (2002); *Nathaniel-Aikens-Afful*, M.D., 62 FR 16871 (1997);