

several patients as well as to an undercover law enforcement agent without medical justification. In further support of its suspension action, the Department of Health also found that the Respondent engaged in sexual misconduct with respect to his treatment of a patient.

There is no evidence before the Acting Administrator that the suspension of the Respondent's medical license has been stayed or lifted. Therefore, the Acting Administrator finds that the Respondent is currently suspended from the practice of medicine in the State of Florida and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

Pursuant to 21 U.S.C. 824(a), the Acting Administrator may revoke a DEA Certificate of Registration if he finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.*, 57 FR 28538 (1992). Nevertheless, despite the findings of the Florida Department of Health related to the Respondent's inappropriate handling of controlled substances, his sexual misconduct with a patient, as well as other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of the Respondent's state authorization to handle controlled substances.

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 Joseph Thomas Allevi, MD.*, 67 FR 35581 (2002); *Dominick A. Ricci, MD.*, 58 FR 51104 (1993); *Bobby Watts, MD.*, 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Florida, the state where he currently possesses a DEA registration. Therefore, the Respondent is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Acting Administrator concludes that it is unnecessary to address whether the Respondent's DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samuel Silas Jackson*, 67 FR 65145

(2002); *Nathaniel-Aikens-Afful, MD.*, 62 FR 16871 (1997); *Sam F. Moore, D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS1852715, issued to Kanwaljit S. Serai, M.D., be, and it hereby is, revoked. The Acting Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective September 5, 2003.

Dated: July 28, 2003.

**William B. Simpkins,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Karen Joe Smiley, M.D.; Revocation of Registration**

On September 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Karen J. Smiley (Dr. Smiley), notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BS5832868 under 21 U.S.C. 824(a)(3), and deny any pending applications for that registration, pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Smiley was not currently authorized to practice medicine or handle controlled substances in Tennessee, the State in which she practices. The order also notified Dr. Smiley that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Smiley at her registered location in Lexington, Tennessee. The show cause order was subsequently returned to DEA unclaimed with a post office notation "Returned to Sender—Not Deliverable as Addressed" stamped to the mailing envelope. According to the investigative file, DEA has made diligent attempts to locate Dr. Smiley and serve her with the Order to Show Cause, but such attempts have not met with success. Her current whereabouts are unknown. DEA has not received a request for hearing or any other reply from Dr. Smiley or anyone

purporting to represent her in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at Dr. Smiley's registered address, (2) the Order to Show Cause having been returned and DEA's unsuccessful attempts at redelivery of the same, and (3) no request for hearing having been received, concludes that Dr. Smiley is deemed to have waived her hearing right. *See David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that Dr. Smiley currently possesses DEA Certificate of Registration BS5832868, and that registration remains valid until February 29, 2004. A review of the investigative reveals that on September 19, 2001, a majority of a quorum of the Tennessee Board of Medical Examiners (Board) approved an Order of Permanent Revocation of the medical license of Dr. Smiley in that state. The matter involving the disposition of Dr. Smiley's Tennessee medical license came before the Board pursuant to an earlier Notice of Charges and Memorandum of Assessment of Civil (Notice of Charges) with respect to Dr. Smiley's medical license. In the Notice of Charges, it was alleged, and the Board subsequently found that Dr. Smiley was "guilty of gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice." Specifically, the Board found, among other things, that Dr. Smiley violated the Board's statutes governing the dispensing and/or prescribing of controlled substances.

The investigative file contains no evidence that the Board's Order of Permanent Revocation has been stayed or that Dr. Smiley's medical license has been reinstated. Therefore, the Acting Administrator finds that Dr. Smiley is not currently authorized to practice medicine in the State of Tennessee. As a result, it is reasonable to infer that she is also without authorization to handle controlled substances in that state.

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