

by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AP1632810, issued to William Peterson, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lionel Resnick, M.D.; Revocation of Registration

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated February 6, 2001, by certified mail to Lionel Resnick, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration AR9599309, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f). The OTSC alleged that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, the State of Florida, was suspended effective October 19, 1999, by the Florida Department of Health based upon Respondent's convictions of eighteen felony counts of mail fraud, in violation of 18 U.S.C. 1341, by the United States District Court, Southern District of Florida. By letter filed March 21, 2001, Respondent requested a hearing in this matter.

On April 2, 2001, the Government filed a Motion for *inter alia* Summary Disposition, on the grounds that Respondent is not currently authorized to handle controlled substances in the jurisdiction in which he is currently registered with DEA. On April 3, 2001, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to Counsel and Order allowing Respondent until April 24, 2001, to respond to the Government's motions, and holding a previously-issued Order for Prehearing Statements in abeyance pending a ruling on the Government's motions.

The Government attached to its Motion a copy of an Administrative Complaint issued by the Department of Health, State of Florida, and signed by

the Secretary and Chief Medical Attorney for the Board of Medicine, and also a document from the Florida Department of Health, Health Licensee Information website, dated July 21, 2000, indicating Respondent's license status as suspended. In light of these attachments, the Government asserts that Respondent does not have a valid license to practice medicine or to handle controlled substances in Florida, the jurisdiction of his practice as indicated on his DEA Certificate of Registration. As of this date, the investigative file contains no response from Respondent nor anyone purporting to represent him.

Judge Bittner rendered her Opinion and Recommended Ruling on May 16, 2001, recommending that Respondent's DEA registration be revoked, and any pending applications for renewal or modification be denied. On June 18, 2001, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator.

The 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 Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice medicine in Florida, and therefore, the Administrator concluded that Respondent is also not authorized to handle controlled substances in Florida, where he conducts business, according to the address listed on his DEA Certificate of Registration. The Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice

medicine in Florida or to handle controlled substances in that State.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the 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 AR 9599309, issued to Lionel Resnick, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchinson,
Administrator.

[FR Doc. 01-26182 Filed 10-17-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of James Jay Rodriguez, M.D.; Revocation of Registration

On or about October 31, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to James Jay Rodriguez, M.D., 156 South Second Street, Selmer, Tennessee 38375, notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BR4717370, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of said registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for the reason that, on December 20, 1999, the Tennessee Department of Health, Board of Medical Examiners (Board) issued an Order of Summary Suspension of License with respect to his state license to practice medicine. The order also notified Dr. Rodriguez that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received at Dr. Rodriguez's address November 24, 2000, as indicated by the signed postal return receipt. To date, no response has been

received from Dr. Rodriguez nor anyone purporting to represent him.

Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Rodriguez is deemed to have waived his right to a hearing. Following a complete review of the investigate file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46 (2001).

The Administrator finds as follows. In a hearing on December 17, 1999, the Tennessee Department of Health, Board of Medical Examiners (Board), found *inter alia* that Dr. Rodriguez entered the Tennessee Medical Foundation on September 23, 1993, for the treatment of drug addiction; that Dr. Rodriguez left treatment March 4, 1994, against medical advice; that on June 1, 1994, the State Volunteer Insurance Company refused to renew Dr. Rodriguez's insurance, stating that he was a high risk because of his ongoing problems with alcohol; that in May 1998 Dr. Rodriguez wrote a letter to DEA requesting that this agency revoke this Schedule II privileges, stating that it was "difficult" for him to distinguish which patients were actually in pain and which were not in pain and in actual need of medications; that on July 16, 1999, Dr. Rodriguez was arrested on the charge of DUI, and the subsequent toxicology report indicated a blood alcohol level of .10% and trace amounts of phentermine, diazepam, nordiazepam, dihydrocodeinone, and trazodon; that on December 9, 1999, Tennessee State investigators interviewed Dr. Rodriguez at his office, and discovered him to be excessively physically nervous and mentally confused. The investigators further observed Dr. Rodriguez's office was in disarray, with large quantities of drugs observe, but not records available regarding the dispensing of drugs. The investigators found a similar state of disarray at Dr. Rodriguez's home. The Board concluded that the state investigators produced evidence of dangerous drugs with addictive effects, along with an open drug safe and a lack of records documenting the dispensing of such drug safe and a lack of records documenting the dispensing of such drugs. The Board specifically concluded that Dr. Rodriguez used dangerous drugs with addictive effects for his own addictions, as well as those of his patients.

As a result of these findings, the Board summarily suspended Dr. Rodriguez's license to practice medicine

in Tennessee. The investigative file contains no evidence that Dr. Rodriguez's license has been reinstated. Therefore, the Administrator concludes that Dr. Rodriguez is not currently authorized to practice medicine in Tennessee, the State in which he maintains his DEA Certificate of Registration.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that Dr. Rodriguez is not authorized to practice medicine in Tennessee, and therefore, the Administrator infers that Dr. Rodriguez is also not authorized to handle controlled substances in Tennessee, the State in which he holds his DEA Certificate of Registration.

Accordingly, the 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 the DEA Certificate of Registration BR4717370, previously issued to James Jay Rodriguez, M.D., be, and it hereby is, revoked. The Administrator hereby further orders that any pending applications for renewal or modification of said registration be and hereby are, denied. This order is effective November 16, 2001.

Dated: October 10, 2001.

Asa Hutchinson,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Arthur Thomassen, D.D.S.; Revocation of Registration

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated February 6, 2001, by certified mail to John Arthur Thomassen, D.D.S., (Respondent) notifying him of an

opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BT0666000, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, California, was revoked.

By letter filed March 9, 2001, Respondent, through counsel, requested a hearing in this matter.

On March 12, 2001, administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements. On March 15, 2001, the Government filed a motion seeking summary disposition, arguing that Respondent's license to practice medicine, and therefore, to handle controlled substances in the jurisdiction of his registration, was revoked.

The Government attached to its motion a copy of the Proposed Decision, rendered by Administrative Law Judge Hoover, *In the Matter of the Supplemental Accusation and Petition to Revoke Probation Against John Arthur Thomassen, D.D.S.*, case number 01-97-1208, dated March 22, 2000. Judge Hoover proposed revocation of the Respondent's probation and state license. The Government also attached the Decision of the Dental Board of California, Department of Consumer Affairs, State of California (Board), *In the Matter of the Supplemental Accusation and Petition to Revoke Probation Against John Arthur Thomassen, D.D.S.*, case number 01-97-1208, dated April 3, 2000. The Board adapted the Administrative Law Judge's decision as its own, to take effect on May 3, 2000.

In light of these attachments, the Government argues that Respondent does not have a valid license to practice dentistry or to handle controlled substances in the jurisdiction indicated on his DEA Certificate of Registration.

By an Order dated March 16, 2000, Judge Randall *inter alia* stayed the proceedings pending the resolution of the Government's motion, and she allowed the Respondent until April 6, 2001, to respond to the Government's motion. No response has been received from Respondent as of this date.

The 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 Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.