

acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the "grey market" for list I chemical products. Absolute's intended customer base consists entirely of such businesses.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. *See, e.g.*, ANM Wholesale, 69 FR 11,652 (2004); Xtreme Enterprises, Inc., *supra*, 67 FR 76,195; Sinbad Distributing, 67 FR 10,232 (2002); K.V.M. Enterprises, 67 FR 70,968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, "[v]irtually all of the Respondent's customers, consisting of gas stations and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine." Xtreme Enterprises, Inc., *supra*, 67 FR at 76,197. As in Xtreme Enterprises, Inc., Mr. Milton's lack of a criminal record and stated intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine exclusively to the gray market.

Additionally, the Deputy Administrator is troubled by Mr. Milton's comments suggesting he still questioned whether list I chemical products are being diverted for illicit manufacturing, even after being specifically educated by DEA investigators to the contrary. His professed personal ignorance of the methamphetamine manufacturing problem in Utah suggests he is motivated by financial gain and would be unable or unwilling to comply with the responsibilities of a DEA registrant.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Absolute Distributing, Inc., be, and it hereby is, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michelle M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04-38]

Roland F. Chalifoux, Jr., D.O.; Revocation of Registration

On April 9, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause to Roland F. Chalifoux, Jr., D.O. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC1457818, under 21 U.S.C. 824(a)(3), and deny his pending application for renewal of that registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged in relevant part that on July 19, 2002, the Texas State Board of Medical Examiners (Medical Board) temporarily suspended Respondent's Texas medical license; that on March 20, 2003, the Texas Department of Public Safety (Department) revoked Respondent's state controlled substances registration; and that as a result, Respondent is not authorized to handle controlled substances in Texas, the state in which he maintains his DEA registration.

By letter dated May 7, 2004, the Respondent, through his legal counsel, timely requested a hearing in this matter. As part of his hearing request, the Respondent asserted that he " * * * has a license to practice medicine in Texas [and no] action has been taken to date that has deprived him of the license." On May 24, 2004, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued to counsel for DEA as well as the Respondent an Order for Prehearing Statements.

In lieu of filing a Prehearing Statement, counsel for DEA filed Government's Motion for Summary Disposition and Motion to Stay the Filing of Prehearing Statements on May 25, 2004. In its motion, the Government recited the primary allegations raised in the Order to Show Cause regarding the July 2002 Temporary Suspension Order of the Medical Board suspending the Respondent's medical license and the Department's March 30, 2003 revocation of the Respondent's Texas state controlled substance registration. In support of its motions, the Government

attached copies of the aforementioned Temporary Suspension Order of the Medical Board as well as the revocation notice of the Department. Accordingly, the Government argued that a motion for summary disposition is appropriate in this matter and Respondent's DEA Certificate of Registration should be revoked.

On June 15, 2004, counsel for the Respondent filed a Response to Motion for Summary Disposition. In his reply brief, the Respondent argued in relevant part that because he currently has licenses to practice in jurisdictions outside of Texas, and since the DEA registration may be utilized in any jurisdiction where a practitioner has a license, the DEA matter is "premature." The Respondent further argued that the Department's revocation notice does not evidence a final action. The Respondent's reply however did not address whether he is currently authorized to handle controlled substances under Texas state law.

On June 28, 2004, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Texas, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision, and on August 10, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BC1457818, and is registered to handle controlled substances at a location in Arlington, Texas, as well as a second medical practice location in South Lake, Texas. As outlined above, the Respondent is currently without authorization to handle controlled substances in Texas based upon the suspension of his medical license, and

most significant, the revocation of his Texas state controlled substances registration. While the Respondent has presented some evidence that he is licensed to practice medicine in jurisdictions other than Texas, there is no evidence before the Deputy Administrator that the Respondent applied for, or has been granted reinstatement of his Texas controlled substance license, the state where he holds a DEA registration.

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 Kanwaljit S. Serai, M.D.*, 68 FR 48943 (2003); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that the Respondent's state controlled substance license has been revoked and there is no information before the Deputy Administrator which points to the Department's revocation order having been rescinded. As a result, the Respondent is not licensed to handle controlled substances in Texas, where he is registered with DEA, and therefore, he is not entitled to maintain that registration.

In further support of his continued registration with DEA, Respondent argues that consideration should be given to his state licensure to practice medicine in jurisdictions other than Texas. However, as noted in Judge Bittner's Opinion and Recommended Decision, DEA regulations require a separate registration "for each principal place of business or professional practice * * * where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person." Therefore, the Respondent's assertions regarding his licensure status in jurisdictions outside of Texas are ultimately irrelevant since his DEA Certificate of Registration is for a Texas address, and he is currently not authorized to handle controlled substances in that state. *See, Layfe Robert Anthony, M.D.*, 67 FR 35582 (2002).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC1457818, issued to Roland F. Chalifoux, Jr., D.O., be, and it hereby is, revoked. The Deputy

Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-35]

Imran I. Chaudry, M.D.; Revocation and Denial of Registration

On February 6, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Imran I. Chaudry, M.D. (Respondent) at two separate addresses in Monroe, Louisiana. The Order to Show Cause notified Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC4775233, and deny any pending applications for modification or renewal of that registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that Respondent's continued registration was inconsistent with the public interest.

Specifically, the Order to Show Cause alleged that in March of 2001, Respondent, (1) had been abusing the controlled substances cocaine and methamphetamine, an (2) in April of 2001, Respondent offered to purchase, and in fact purchased, approximately 14 grams of methamphetamine, for which he was arrested and charged with Possession of Methamphetamine with Intent to Distribute, and Conspiracy to Distribute Methamphetamine.

By letter dated March 5, 2002, Respondent through his legal counsel requested a hearing on the issues raised by the Order to Show Cause. Following pre-hearing procedures, a hearing was held on December 4, 2002, in Monroe, Louisiana. While both parties called witnesses to testify at the hearing, Respondent elected not to testify in his behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On June 13, 2003, Administrative Law Judge Gail A. Randall (Judge Randall) issued her Recommended Rulings, Findings of Fact, Conclusions of Law

and Decision (Opinion and Recommended Ruling) in which she concluded that grounds existed to revoke Respondent's DEA registration, but recommended that Respondent's then-pending applications for renewal and change of registered address be granted, subject to certain conditions. On June 19, 2003, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling and on July 2, 2003, Respondent filed a response to the Government's exceptions. On August 6, 2003, Judge Randall transmitted the record of these proceedings to the Administrator of DEA.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. As set forth below, the Deputy Administrator adopts in part, the recommended findings of fact and conclusions of law of the Administrative Law Judge. The Deputy Administrator does not adopt the Administrative Law Judge's recommendation that Respondent's applications for renewal of registration and change of registered address be granted.

The record before the Deputy Administrator shows that as of the date of the hearing, Respondent's license to practice medicine in Louisiana was in good standing and that he possessed a then-current Louisiana narcotics license. Respondent practices medicine in the vicinity of Monroe, Louisiana as a cardiologist. In the rural area where Respondent's practice is located, the ratio of physicians to patients is approximately 1 to 2,000 to 2,500. Respondent is the only cardiologist in that community. Evidence was also presented during the hearing that, although twenty-five percent of Louisiana's citizens reside in rural areas of the state, only six percent of Louisiana's practicing primary care physicians practice medicine in rural areas.

On August 19, 1998, DEA issued Certificate of Registration BC4775233 to Respondent and that certificate expired on August 31, 2001. Nevertheless, by application dated September 4, 2001, Respondent attempted to renew the registration and modify it to reflect a new address. A Government witness testified that because Respondent submitted a renewal application, he was authorized to prescribe controlled substances within the course of legitimate medical practice on a day-to-day basis until conclusion of these proceedings. However, since he was no