



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

**[Docket No. 11-3]  
SILVIU ZISCOVICI, M.D.  
DECISION AND ORDER**

On December 10, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

**ORDER**

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BZ4692756, issued to Silviu Ziscovici, M.D., be, and it hereby is, revoked. I further order that any pending application of Silviu Ziscovici, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.<sup>1</sup>

Dated: November 8, 2011

Michele M. Leonhart  
Administrator

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<sup>1</sup> For the same reasons that led me to order that Respondent's registration be immediately suspended, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67

*Christine M. Menendez, Esq.*, for the Government  
*Peter D. Greenspun, Esq.*, for the Respondent

**RECOMMENDED RULING, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. § 551 et seq., to determine whether Respondent's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent Silviu Ziscovici, M.D. (Respondent), would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

**I. PROCEDURAL POSTURE**

On September 15, 2010, the Deputy Administrator, DEA, issued an Order to Show Cause and Immediate Suspension (OSC/IS) of DEA COR BZ4692756, dated September 15, 2010, and served on Respondent on September 22, 2010. The OCS/IS alleged that Respondent's continued registration constitutes an imminent danger to the public health and safety. The OSC/IS also provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR BZ4692756 pursuant to 21 U.S.C. § 824(a)(4), and deny any pending applications for renewal or modification, on the grounds that Respondent's continued registration would be inconsistent with the public interest under 21 U.S.C. § 823(f). On October 18, 2010, Respondent, through counsel, in a letter dated October 15, 2010, timely requested a hearing with the DEA Office of Administrative Law Judges (OALJ).

I issued an Order for Prehearing Statements on October 19, 2010. The parties filed prehearing statements, and on November 23, 2010, I issued a Prehearing Ruling.

On December 2, 2010, the Government filed a Motion for Summary Disposition, with a copy served on Respondent via facsimile on December 2, 2010, and another copy sent via U.S. mail. On December 2, 2010, I issued an order staying the proceedings until the resolution of the Government's motion. Pursuant to the November 23, 2010 Order for Prehearing Statements, Respondent had until "4:00 p.m. EST three business days after the date of service of [the Government's] motion[]" to file a response . . . In the absence of good cause, failure to file a written response to the moving party's motion will be deemed a waiver of objection." (Prehearing Ruling at 6.)

As of December 10, 2010, six business days after service of the Government's motion for summary disposition, Respondent had not filed a response. Respondent is therefore deemed to waive any objection to the Government's motion. This waiver of objection does not mean that I will automatically grant the relief requested by the Government. Instead, I will carefully consider the merits of the Government's positions, taking into consideration Respondent's lack of objection, but only granting whatever relief may be warranted by the law and the facts.

## **II. THE PARTIES' CONTENTIONS**

### **A. The Government**

In support of its motion for summary disposition, the Government asserts that on December 1, 2010, the Maryland State Board of Physicians<sup>2</sup> issued an order immediately suspending Respondent's Maryland medical license, and that Respondent consequently lacks

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<sup>2</sup> The Government refers to the Maryland medical licensing body as the "Maryland Board of Medicine" (Mot. Summ. Disp. at 1.) Government Exhibit A, however, suggests the correct name is the Maryland State Board of Physicians. (Gov't Ex. A at 1.)

authority to possess, dispense or otherwise handle controlled substances in Maryland, the jurisdiction in which he maintains his DEA registration. The Government contends that such state authority is a necessary condition for maintaining a DEA COR and therefore asks that I summarily recommend to the Deputy Administrator that Respondent's COR be revoked and any pending application for renewal or modification be denied. In support of its motion, the Government cites agency precedent and attaches the "Order for Summary Suspension of License to Practice Medicine" issued by the Maryland State Board of Physicians, marked for identification as Exhibit A.

### **B. Respondent**

As noted above, Respondent did not respond to the Government's Motion for Summary Disposition or seek an extension within the deadline for response and is therefore deemed to waive objection.

### **III. DISCUSSION**

At issue is whether Respondent may maintain his DEA COR given that Maryland has suspended his state license to practice medicine.

Under 21 U.S.C. § 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.*, 74 Fed. Reg. 17,528 (DEA 2009); *David W. Wang, M.D.*, 72 Fed. Reg. 54,297 (DEA 2007); *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130 (DEA 2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104 (DEA 1993); *Bobby Watts M.D.*, 53 Fed. Reg.

11,919 (DEA 1988).

Summary disposition in a DEA suspension case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because "revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement." *Stuart A. Bergman, M.D.*, 70 Fed. Reg. 33,193 (DEA 2005); *Roger A. Rodriguez, M.D.*, 70 Fed. Reg. 33,206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. *See Layfe Robert Anthony, M.D.*, 67 Fed. Reg. 35,582 (DEA 2002); *Michael G. Dolin, M.D.*, 65 Fed. Reg. 5661 (DEA 2000); *see also Philip E. Kirk, M.D.*, 48 Fed. Reg. 32,887 (DEA 1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). *Accord Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent does not contest, that Respondent's Maryland medical license is presently suspended. This allegation is confirmed by Government Exhibit A. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Maryland. Because "DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices," *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (DEA 2006), I conclude that summary disposition is appropriate. It is therefore

**ORDERED** that the hearing in this case, scheduled to commence on February 7, 2011, is hereby **CANCELED**.

**RECOMMENDED DECISION**

I grant the Government's motion for summary disposition and recommend that Respondent's DEA COR BZ4692756 be revoked and any pending applications denied.

Dated: December 10, 2010

Timothy D. Wing  
Administrative Law Judge

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