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## DEPARTMENT OF JUSTICE

## DRUG ENFORCEMENT ADMINISTRATION

**[Docket No. 12-09]**
**SCOTT W. HOUGHTON, M.D.**
**DECISION AND ORDER**

On November 4, 2011, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, 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), I order that DEA Certificate of Registration BH8796077, issued to Scott W. Houghton, M.D., be, and it hereby is, revoked. I further order that any pending application of Scott W. Houghton, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated:
February 1, 2012

Michele M. Leonhart
Administrator

[1] Based on the State's Immediate Suspension of Respondent's Connecticut Controlled Substances Registration, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

Carrie Bland, Esq., for the Government
R. Cornelius Danaher, Jr., Esq., for the Respondent

**ORDER GRANTING SUMMARY DISPOSITION AND RECOMMENDED DECISION**

Chief Administrative Law Judge John J. Mulrooney, II. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC), dated September 27, 2011, proposing to revoke the DEA Certificate of Registration (COR), Number BH8796077, Scott W. Houghton, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006). In the OSC, the Government alleges that Respondent is "currently without authority to handle controlled substances in the [s]tate of Connecticut," and that, as such, Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. § 823(f) (2006 & Supp. III 2010).[1] OSC at 1.

On October 26, 2011, the Respondent, through counsel, timely filed a request for hearing coupled with a request for a continuance. An order issued that day which denied the Respondent's continuance request and set a briefing schedule on the issue of whether he possessed state authority to possess controlled substances. The parties timely complied. On October 28, 2011, the Government filed a document styled "Government's Motion for Summary Disposition" (Motion for Summary Disposition) and on November 4, 2011, the Respondent filed his reply (Respondent's Reply).

The Government's Motion for Summary Disposition attached a copy of a February 3, 2010 Order of Immediate Suspension of Controlled Substance Registration (Suspension Order) issued by the Commissioner of the Connecticut Department of Consumer Protection, as well as

[1] Interestingly, lack of state authority is the only ground for which the Government's charging document has supplied a factual basis. Beyond the issue of state authority, no factual basis has been included that would provide the Respondent with notice as to why his continued registration might be inconsistent with the public interest.

an August 13, 2011 Interim Consent Order, executed by the Respondent and an official of the Connecticut Department of Health, which memorialized the former's suspension and surrender of his state license to practice medicine. Both parties agree that the Respondent is currently without authorization to practice medicine and handle controlled substances in Connecticut, the jurisdiction where he holds the DEA COR that is the subject of this litigation. Although the Respondent does not contest the current status of his state license and lack of authorization to handle controlled substances, in his Reply, he has stresses his intention to contest these issues before the Connecticut authorities in the future. Reply at 2.

The Controlled Substances Act (CSA) requires that a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. See 21 U.S.C. § 802(21) ("[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice"); see also id. § 823(f) ("The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices."). Therefore, because "possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration," this Agency has consistently held that "the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority]." Roy Chi Lung, 74 FR 20346, 20347 (2009); Scott Sandarg, D.M.D., 74 FR 17528, 174529 (2009); John B. Freitas, D.O., 74 FR 17524, 17525 (2009); Roger A. Rodriguez, M.D., 70 FR 33206, 33207 (2005); Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Abraham A. Chaplan, M.D., 57 FR

55280 (1992); Bobby Watts, M.D., 53 FR 11919 (1988); see also Harrell E. Robinson, 74 FR 61370, 61375 (2009).

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 C.F.R. § 1301.44(e). Once DEA has made its prima facie case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. Morall v. DEA, 412 F.3d 165, 174 (D.C. Cir. 2005); Humphreys v. DEA, 96 F.3d 658, 661 (3d Cir. 1996); Shatz v. U.S. Dept. of Justice, 873 F.2d 1089, 1091 (8th Cir. 1989); Thomas E. Johnston, 45 FR 72311 (1980).

Regarding the Government's motion, summary disposition of an administrative case is warranted where, as here, "there is no factual dispute of substance." See Veg-Mix, Inc., 832 F.2d 601, 607 (D.C. Cir. 1987) ("an agency may ordinarily dispense with a hearing when no genuine dispute exists"). A summary disposition would likewise be warranted even if the period of suspension were temporary, or if there were (as he avers) the potential that Respondent's state controlled substances privileges could be reinstated, because "revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement," Rodriguez, 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. Michael G. Dolin, M.D., 65 FR 5661, 5662 (2000). It is well-settled that where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, see Jesus R. Juarez, M.D., 62 FR 14945 (1997); Dominick A. Ricci, M.D., 58 FR 51104 (1993), under the rationale that Congress does not intend for administrative agencies to perform meaningless tasks. See Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. Kirk

v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also Puerto Rico Aqueduct & Sewer Auth. v. EPA, 35 F.3d 600, 605 (1st Cir. 1994); NLRB v. Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, 549 F.2d 634 (9th Cir. 1977); United States v. Consol. Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971).

At this juncture, no genuine dispute exists over the established material fact that Respondent currently lacks state authority to handle controlled substances. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that can provide me with authority to continue his entitlement to a COR under the circumstances. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. See Gregory F. Saric, M.D., 76 FR 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby

**GRANT** the Government's Motion for Summary Disposition;

**DENY** the Government's Motion for Stay of Proceedings as moot;

and further **RECOMMEND** that the Respondent's DEA registration be **REVOKED** forthwith and any pending applications for renewal be **DENIED**.

Dated: November 4, 2011

s/JOHN J. MULROONEY, II
Chief Administrative Law Judge

[FR Doc. 2012-3057 Filed 02/09/2012 at 8:45 am; Publication Date: 02/10/2012]