



BILLING CODE: 4410-09-P

DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

**MATTHEW J. KACHINAS, M.D.
DECISION AND ORDER**

On September 27, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Matthew J. Kachinas, M.D. (hereinafter, Registrant), of Ft. Myers and Venice, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration, #s FK1795624 and FK1794305, and the denial of any applications to renew or modify the registrations, on two grounds. Show Cause Order at 1 (citing 21 U.S.C. §§ 823(f), 824(a)(3) & (4)).

First, the Order alleged that as a result of an action taken by the Florida Board of Medicine, Registrant no longer holds authority to dispense controlled substances in Florida, the State in which he holds his registrations. Show Cause Order at 2. Second, the Order alleged that "DEA's investigation revealed that [Registrant] stored and later abandoned controlled substances at an unregistered location, in violation of 21 CFR 1301.12(a)." *Id.* The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either. *See id.* (citing 21 CFR 1301.43(a), (c), (d), & (e)).

As evidenced by the signed return receipt card, on December 5, 2011, service was accomplished on Registrant by certified mail addressed to him at his residence. GX 7. Since the date of service, more than thirty days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. Accordingly, I find that Registrant has waived both his right to a hearing and his right

to submit a written statement in lieu of a hearing. 21 CFR 1301.43(e). Accordingly, I issue this Decision and Order based on relevant evidence contained in the Investigative Record submitted by the Government. I make the following findings.

FINDINGS

Registrant is the holder of two DEA Certificates of Registration, which authorize him to dispense controlled substances in schedules II through V as a practitioner: 1) #FK1795624, with the registered address of 13100 Westlinks Terrace, Suite 12, Ft. Myers, Florida; and 2) #FK1794305, with the registered address of 401 Commercial Ct., Suite D, Venice, Florida. Both of these registrations do not expire until December 31, 2012.¹

Registrant formerly held a license to practice medicine which was issued by the Florida Board of Medicine. However, on April 16, 2010, the Board of Medicine issued a Final Order which adopted the recommended order of a state Administrative Law Judge and revoked Registrant's medical license. GX 5, at 10-11. Accordingly, I find that Registrant is without authority under the laws of Florida to practice medicine and dispense controlled substances.

The Government also submitted various Incident Reports it obtained from the Longboat Key, Florida Police Department. According to these reports, on July 6, 2011, a police officer was summoned to a home located at 1590 Harbor Cay Lane based on "a complaint of some type of hazardous materials located in a repossessed home." GX 6, at 1. According to the report, the responding officer spoke with one Ms. O. of Field Asset Services, an Austin, Texas based firm, who stated that the home had been recently repossessed from a former physician and that she was hired to clean up the property. Id. at 3. Ms. O. showed the officer items that she believed to be narcotics, a large amount of needles, and a lab specimen medium. Id. The officer took

¹ Registrant also held a third registration, which expired on December 31, 2011. However, the Government states that Registrant did not file a renewal application for this registration. Request for Final Agency Action at 7.

possession of the items suspected of being controlled substances and advised Ms. O. that the needles and other medical supplies should be declared bio-hazards and removed by a professional disposal firm. Id. Another portion of the report lists the confiscated items and includes five vials of injectable Diazepam 5mg/ml (a schedule IV controlled substance), 11 vials of injectable midazolam 50mg/10ml (also a schedule IV controlled substance), 1 vial of ketamine 500gm/10ml (a schedule III controlled substance), as well as one partially used vial of each of these drugs, and one vial of brexival sodium (a schedule IV controlled substance). Id. at 2. The police report, however, contains no further information explaining how the determination was made that the vials contained the above listed drugs. See generally id. Nor does any other evidence in the record establish how this determination was made.

In addition, the record includes a document which provides Master Information for Registrant's expired registration and lists the same 1590 Harbor Cay Lane address as his mailing address. GX 3. While this document creates a reasonable suspicion that Registrant brought the above items to this address, the record contains no further evidence sufficient to move beyond suspicion and into the realm of substantial evidence necessary to establish this as a fact. See NLRB v. Columbian E. & S. Co., 306 U.S. 292, 300 (1939) ("Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established."). More specifically, while the police report notes that the home had "recently been repossessed from" Registrant, no other evidence establishes the declarant's basis of knowledge, let alone such facts as the respective dates on which Registrant vacated the premises and the home was repossessed, whether the home was secured after Registrant vacated the premises and was in that state when Ms. O. entered it and found the items, and whether Registrant was the only person who stayed in the home and who had access to controlled substances.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Moreover, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration.

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person 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.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. See, e.g., Calvin Ramsey, 76 FR 20034, 20036 (2011); Dominick A. Ricci, 58 FR 51104, 51105 (1993); Bobby Watts, 53 FR 11919, 11920 (1988).

As found above, on April 16, 2010, the Florida Board of Medicine revoked Registrant’s medical license and accordingly, he is no longer authorized under Florida law to dispense

controlled substances. Because Registrant no longer satisfies the CSA's requirement for maintaining his registrations, I will order that his registrations be revoked and that any pending applications be denied.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a)(3), as well as 28 CFR 0.100(b), I order that DEA Certificates of Registration FK1795624 and FK1794305, issued to Matthew J. Kachinas, M.D., be, and they hereby are, revoked. I further order that any pending application of Matthew J. Kachinas, M.D., to renew or modify either registration, be, and it hereby is, denied. This Order is effective [Insert Date THIRTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated:
May 4, 2012

Michele M. Leonhart
Administrator

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