



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

**DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

**[Docket No. 12-30]  
JAMES EDGAR LUNDEEN, Sr., M.D.  
DISMISSAL OF PROCEEDING**

On December 19, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to James Edgar Lundeen, Sr., M.D. (Respondent), of Uniontown, Ohio. The Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner, and the denial of any pending application to renew or modify the registration, on the ground that Respondent does not have authority under Ohio law to practice medicine or dispense controlled substances. Show Cause Order at 1.

Following service of the Show Cause Order, Respondent requested a hearing. Thereafter, the Government moved for summary disposition; Respondent opposed the motion. On February 22, 2012, the ALJ granted the Government's motion, finding that there was no dispute as to the material fact that Respondent does not possess authority under Ohio law to dispense controlled substances and that he was therefore not entitled to hold his DEA registration. ALJ Dec. at 4-7. The ALJ thus recommended that Respondent's registration be revoked and that any pending application to renew or modify his registration be denied. *Id.* at 8. Neither party filed exceptions to the ALJ's decision and on March 20, 2012, the ALJ forwarded the record to me for Final Agency Action.

Upon review of the record, it was noted that the Government had alleged in the Show Cause Order that Respondent's registration was due to expire on March 31, 2012. Show Cause Order at 1. The record, however, contained no evidence as to whether Respondent had filed a

renewal application.<sup>1</sup> Because in the absence of a timely renewal application, Respondent's registration would expire, see 5 U.S.C. § 558(c), pursuant to 5 U.S.C. § 556(e) and 21 CFR 1316.59, I have taken official notice of Respondent's registration record with the Agency.<sup>2</sup> According to this record, Respondent has not filed a renewal application. Accordingly, I find that Respondent's registration has expired.

Under DEA precedent, "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." Ronald J. Riegel, 63 FR 67132, 67133 (1998); see also Thomas E. Mitchell, 76 FR 20032, 20033 (2011). Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon. Accordingly, because Respondent has allowed his registration to expire and has not filed any application, this case is now moot and will be dismissed.<sup>3</sup>

## **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I hereby order that the Order to Show Cause issued to James Edgar Lundeen, Sr., M.D., be, and

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<sup>1</sup> Nor does the record contain a copy of Respondent's Registration or any other evidence establishing the Agency's jurisdiction. Henceforth, the ALJs should ensure that such evidence is submitted for the record prior to acting upon any dispositive motion.

<sup>2</sup> In accordance with the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. § 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen calendar days of service of this order which shall commence on the date this order is mailed.

<sup>3</sup> While the Show Cause Order will be dismissed, under 21 U.S.C. § 823(f), Respondent is not entitled to be registered until he is again "authorized to dispense . . . controlled substances under the laws of the State in which he practices."

it hereby is, dismissed. This order is effectively immediately.

Dated:  
May 4, 2012

Michele M. Leonhart  
Administrator

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