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DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

[Docket No. 12-56]
FERNANDO VALLE, M.D.
DECISION AND ORDER

On August 10, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificates of Registration be revoked and that any pending applications to renew or modify his registrations be denied.

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 Numbers FV1935595, FV2000711, and FV2000735, issued to Fernando Valle, M.D., be, and they hereby are, revoked. I further order that any pending applications of Fernando Valle, M.D., to renew or modify his registrations, be, and they hereby are, denied. This Order is effective immediately.[1]

Dated: October 26, 2012

Michele M. Leonhart
Administrator

[1] Based on the findings of the Florida Department of Health's Order of Emergency Suspension of License, I conclude that the public interest requires this Order be effective immediately. 21 CFR 1316.67.

Michelle Gillice, Esq., for the Government
Dale Sisco, Esq., for the Respondent

ORDER GRANTING THE GOVERNMENT'S MOTION FOR SUMMARY DISPOSITION AND RECOMMENDED DECISION

Chief Administrative Law Judge John J. Mulrooney, II. On June 25, 2012, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) immediately suspending and proposing to revoke the DEA Certificate of Registration (COR), Number FV1935595, of the Respondent pursuant to 21 U.S.C. § 824(a), and to deny any pending applications for registration, renewal or modification pursuant to 21 U.S.C. §§ 823(f) and 824(a) because the Respondent's continued registration would "be inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f)." As grounds for these proposed actions, the OSC/ISO alleges that the Respondent "prescribed . . . controlled substances to . . . undercover law enforcement officers not for a legitimate medical purpose in the usual course of professional practice in violation of applicable Federal, State and local law." OSCI/ISO, at 1. The OSC/ISO was served on the Respondent on June 27, 2012. Gov't Not. of Service. On July 26, 2012, the Respondent, through counsel, filed a timely request for hearing.

On July 27, 2012, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings ("MSD"), in which it represented that "[o]n June 26, 2012, the State of Florida [the state in which Respondent holds his COR] Department of Health executed an emergency order suspending Respondent's medical license M41752, effective immediately."[1] MSD, at 1. Based on the foregoing, the Government sought the following relief: (1) summary disposition; (2) a recommendation that the "Respondent's DEA registration be revoked and any

[1] The order of suspension ("Emergency Order") is attached to the MSD as "Exhibit A." The emergency suspension appears to be based on the same allegations set forth in the OSC/ISO.

pending application for renewal or modification of such registration be denied;" (3) the transmission of the instant matter to the Administrator for Final Agency Action; and (4) a stay of these administrative proceedings pending the results of the Government's motion for summary disposition. MSD, at 3.

By a July 27, 2012, Order, this tribunal granted the Government's motion to stay, and directed the Respondent to file a response to the Government's motion for summary disposition on or before August 6, 2012. Order Regarding Government's Motion for Summary Disposition, at 2.

On August 3, 2012, the Respondent filed his response to the MSD. Respondent's Response to Government's Motion for Summary Disposition ("Response"). In the Response, the Respondent contends that revocation based on the Emergency Order "will effectively result in a denial of Due Process to Respondent without notice or opportunity for hearing and based only on the minimal standards of probable cause." Response, at 2-3. The Respondent further submits that:

> Summary Disposition is inappropriate prior to resolution of the numerous questions of material fact, as well as procedural issues, associated with the emergency suspension of his Florida Medical License and immediate suspension of his DEA registrations. With regard to his DEA registrations, these include, but are not limited to, whether the immediate suspension of the Respondent's registration was based on a valid inspection and investigation; whether the continued registration of the Respondent constitutes an imminent danger to the public health and safety; and whether other grounds exist for the Government to limit the suspension of the Respondent's registration.

Response, at 3.

On August 6, 2012, the Government filed a Reply to Respondent's Response to Motion for Summary Disposition and Motion to Stay Proceedings ("Reply"). In its reply, the Government contends that the "Respondent does not dispute that his medical license is

suspended and that he lacks authority to handle controlled substances in the State of Florida, the jurisdiction where he is licensed to practice medicine. Absent authority by the State of Florida, Respondent simply is not authorized to possess a DEA registration in that state." Reply, at 1.

In its MSD and its Reply, the Government correctly contends that state authority is a necessary condition precedent for the acquisition or maintenance of a DEA registration, and the suspension of the Respondent's state practitioner's license precludes the continued maintenance of his DEA COR, thus requiring revocation. MSD at 1-2; Reply at 1-2. The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in "the jurisdiction in which he practices." 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."). DEA has long held that possession of authority under state law to dispense controlled substances is an essential condition for obtaining and maintaining a DEA registration. Serenity Café, 77 Fed. Reg. 35027, 35028 (2012); David W. Wang, 72 Fed. Reg. 54297, 54298 (2007); Sheran Arden Yeates, 71 Fed. Reg. 39130, 39131 (2006); Dominick A. Ricci, M.D., 58 Fed. Reg. 51104 (1993); Bobby Watts, M.D., 53 Fed. Reg. 11919 (1988). Notwithstanding the foregoing, the Respondent contends that the Emergency Order may not form the basis of revocation insofar as the order was issued prior to a hearing. Response, at 3.

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 Fed. Reg. 20346, 20347 (2009); see also Scott Sandarg, D.M.D., 74 Fed. Reg. 17528, 174529 (2009); John B. Freitas, D.O., 74 Fed. Reg. 17524, 17525 (2009); Roger A. Rodriguez, M.D., 70 Fed. Reg. 33206, 33207 (2005); Stephen J. Graham, M.D., 69 Fed. Reg. 11661 (2004); Abraham A. Chaplan, M.D., 57 Fed. Reg. 55280 (1992); see also Harrell E. Robinson, 74 Fed. Reg. 61370, 61375 (2009). Notably, "revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail." Kamal Tiwari, M.D., 76 Fed. Reg. 71604, 71606 (2011) (emphasis added); see also Bourne Pharmacy, Inc., 72 Fed Reg. 18273, 18274 (2007); Anne Lazar Thorn, 62 Fed. Reg. 12847 (1997).

The Respondent's assertions that the State of Florida and DEA acted in temporally close fashion has no bearing on the correct resolution of the issue raised by the Government's MSD. Neither does it matter that the Respondent intends to contest the emergency order at a state administrative hearing. Tiwari, M.D., 76 Fed. Reg. at 71606. It is uncontested that the Respondent does not presently enjoy the privileges of handling controlled substances in the State of Florida, the state where his COR is registered. In Anne Lazar Thorn, M.D., 62 Fed. Reg. 12847 (1997), the Agency affirmed the Administrative Law Judge's summary disposition recommended decision and specifically rejected the view that a COR could coexist in the face of an absence of state authority to handle controlled substances. In that case, the Agency held that:

> the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances in the state. In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the [state where his COR has its listed address]. Therefore . . . Respondent is not currently entitled to a DEA [COR].

Id. at 12848 (emphasis supplied). Similarly, in Calvin Ramsey, M.D., 76 Fed. Reg. 20034, 20036 (2011), the Agency stated its position with such unambiguous precision that little room is realistically left for debate on the matter:

> DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. David W. Wang, 72 [Fed. Reg.] 54297, 54298 (2007); Sheran Arden Yeates, 71 [Fed. Reg.] 39130, 39131 (2006); Dominck A. Ricci, 58 [Fed. Reg.] 51104, 51105 (1993); Bobby Watts, 53 [Fed. Reg.] 11919, 11920 (1988). This is so even where a state board has suspended (as opposed to revoked) a practitioner's authority with the possibility that the authority may be restored at some point in the future. [Roger A. Rodriguez, 70 Fed. Reg. 33206, 33207 (2005)].

Although the Respondent avers his intention to vigorously contest the grounds for Florida's emergency order,[2] that intention does not affect the correct resolution of the present question. The Agency has held that even without evaluating the specific bases for state administrative action against a medical license, a "[s]tate's action in suspending [a registrant's] medical license is by itself, an independent ground to revoke [a] registration." James L. Hooper, M.D., 76 Fed. Reg. 71371, 71372 (2011).

The seminal issue presented by the MSD, whether a hearing is appropriate under the uncontroverted circumstances present here, must be answered in the negative. Congress does not intend for administrative agencies to perform meaningless tasks. See Philip E. Kirk, M.D., 48 Fed. Reg. 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). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts

[2] Response at 3.

are agreed upon, a plenary, adversarial administrative proceeding is not required. See Jesus R. Juarez, M.D., 62 Fed. Reg. 14945 (1997); Dominick A. Ricci, M.D., 58 Fed. Reg. 51104 (1993).

At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Florida. 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 would provide DEA with the authority to allow the Respondent to continue to hold his COR. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted.[3] 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"); see also Gregory F. Saric, M.D., 76 Fed. Reg. 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).

[3] Even assuming arguendo the possibility that the Respondent's state controlled substances privileges could be reinstated, summary disposition would still be warranted because "revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement," Rodriguez, 70 Fed. Reg. 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 Fed. Reg. 5661, 5662 (2000).

Accordingly, I hereby

GRANT the Government's Motion for Summary Disposition; and **RECOMMEND** that the Respondent's DEA registration be **REVOKED** forthwith and any pending applications for renewal be **DENIED**.

Dated: August 10, 2012

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

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