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DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

[Docket No. 13-4]
BRIAN EARL CRESSMAN, M.D.
DECISION AND ORDER

On December 5, 2012, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached Amended Order Granting the Government's Motion for Summary Disposition and Recommended Decision (hereinafter, Recommended Decision). Therein, the ALJ found that Respondent is no longer authorized under Alabama law to dispense controlled substances and therefore recommended that his DEA Certificate of Registration, BC4785614, be revoked. See Recommended Decision at 3-5. Neither party filed exceptions to the Recommended Decision. Having reviewed the entire record, I have decided to adopt the ALJ's Recommended Decision in its entirety including his recommended order. See Hooper v. Holder, 2012 WL 2020079,*2 (4th Cir. 2012).

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 BC4785614, issued to Brian Earl Cressman, M.D., be, and it hereby is, revoked. I further order that any pending application of Brian Earl Cressman, M.D., to renew or modify this registration, be, and it hereby is, denied. This Order is effective [Insert Date Thirty Days from the Date of Publication in the Federal Register].

Dated: February 12, 2013

Michele M. Leonhart
Administrator

Theresa Krause, Esq., for the Government
Brian Earl Cressman, M.D., pro se, for the Respondent

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

Chief Administrative Law Judge John J. Mulrooney, II. On October 25, 2012, the Administrator of the Drug Enforcement Administration (DEA or Government) 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 BC4785614, of Brian Earl Cressman, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006), because the 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). In the OSC/ISO, the Government alleges as grounds for revocation, inter alia, that the Respondent is "without authority to handle controlled substances in the [s]tate of Alabama." OSC/ISO at 1.

On November 14, 2012, the DEA Office of Administrative Law Judges (OALJ) received from the Respondent, representing himself, pro se, a timely filed request for hearing (Hearing Request). Therein, the Respondent conceded that his Alabama Controlled Substance Certificate (ACSC) was revoked in February of 2012. Resp't Hrng. Req., at 1. The same day, this tribunal issued an order (Briefing Schedule): (1) directing the Government to "provide evidence to support the allegation that the Respondent lacks state authority to handle controlled substances" on or before Wednesday, November 21, 2012; (2) setting a deadline of November 21, 2012 for the Government to file a motion for summary disposition; and (3) setting a deadline of November 30, 2012 for the Respondent to respond to any motion for summary disposition. Briefing Schedule, at 1-2.

On November 20, 2012, the Government filed a Motion for Summary Disposition ("MSD"), seeking: (1) summary disposition; and (2) a recommendation that "the Respondent's DEA COR as a practitioner be revoked based on the Respondent's lack of a state license." MSD, at 5. A copy of a June 21, 2010 Order issued by the Alabama Board of Medical Examiners revoking the Respondent's ACSC was attached to the MSD. MSD App. A. Additionally, the Government included a printout from the Alabama State Board of Medical Examiners website dated November 15, 2012, which lists the status of the Respondent's ACSC as revoked, and also a verification of controlled substances registration, dated November 15, 2012, from the Alabama State Board of Medical Examiners, confirming the revocation. MSD Apps. B, C. The Respondent did not file a response to the Government's motion within the time allowed.

On December 3, 2012, this tribunal issued an "Order Granting the Government's Unopposed Motion for Summary Disposition and Recommended Decision," (Summary Disposition Order/Recommended Decision). On the same day the Summary Disposition Order/Recommended Decision was issued, the Respondent filed with the tribunal an untitled letter (Post Order Letter). This amended order has been issued to incorporate the consideration of the matters set for in the Respondent's Post Order Letter, and supersedes the previously-issued Summary Disposition Order/Recommended Decision in all respects.

In his Post Order Letter, the Respondent represents "that the Alabama revocation decision, was dismissed in a Montgomery circuit court by the Honorable Judge Hardwick." Post Order Letter, at 1. In support of this assertion, the Respondent provided a copy of an August 25, 2010 Order from the Circuit Court of Montgomery County (Hardwick, J.). Id. at 2-3. Contrary to the Respondent's assertion, this Order did not dismiss the Alabama Board Order revoking the

Respondent's state controlled substance privileges, but stayed the Order "pending judicial review by the Court of Civil Appeals." Id. at 3. In a subsequent, published decision, the Alabama Court of Civil Appeals dismissed the Respondent's appeal of the Alabama Board Order on procedural grounds. Cressman v. Ala. Bd. of Med. Exam'rs, 72 So. 3d 679 (Ala. Civ. App. 2011). Moreover, as discussed, supra, in his Request for Hearing, the Respondent has already conceded that his Alabama controlled substance privileges were "revoked in Feb[ruary] 2012." Resp't Req. for Hrng at 1. Therefore, the Respondent's letter notwithstanding, it is beyond argument that the Respondent does not currently possess authority to handle controlled substances in the State of Alabama, the state of his DEA COR.

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).

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). 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).[1] "[R]evocation 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); see also Bourne Pharmacy, Inc., 72 Fed Reg. 18273, 18274 (2007); Anne Lazar Thorn, 62 Fed. Reg. 12847 (1997).

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,

[1] But see 21 U.S.C. § 824(a)(3) ("A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority . . . .") (emphasis added).

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 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). Here, both parties agree, and the supplied Alabama Board Order and other documentation establish, that the Respondent is without authorization to handle controlled substances in Alabama,[2] the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

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").[3] At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Alabama. 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. In view of this determination, it is unnecessary to address the remaining allegations contained in the OSC/ISO.

Accordingly, I hereby

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[2] The Respondent's representation that he has secured employment in Texas is of no moment here. See Shahid Musud Siddiqui, M.D., 61 Fed. Reg. 14818 (1996) (a registrant's controlled substance privileges in a state outside the state of his DEA registration is irrelevant).

[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).

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: December 5, 2012

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

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