

The Deputy Administrator agrees with Judge Bittner that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his violation of controlled substance laws and his felony conviction.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should be granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration.

1. Respondent must continue his involvement with the Medical Board's Monitored Aftercare Program and abide by its requirements regardless of whether the Medical Board requires such involvement.

2. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the February 12, 1996 application for registration submitted by Mark Binette, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

**Donnie R. Marshall,**  
*Deputy Administrator.*

[FR Doc. 99-20232 Filed 8-5-99; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Rafael Cappiello, M.D., Revocation of Registration**

On April 8, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rafael Cappiello, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC8554354 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not

currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Cappiello that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cappiello or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cappiello is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR parts 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cappiello currently possesses DEA Certificate of Registration AC8554354 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cappiello's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cappiello is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Dr. Cappiello is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cappiello is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of

Registration AC8554354, previously issued to Rafael S. Cappiello, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

**Donnie R. Marshall,**  
*Deputy Administrator.*

[FR Doc. 99-20237 Filed 8-5-99; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Robert S. Chancellor, M.D., Revocation of Registration**

On April 8, 1999, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert S. Chancellor, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BC2622644 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Chancellor that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Chancellor or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chancellor is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without hearing pursuant to 21 CFR 1391.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Chancellor currently possesses DEA Certificate of Registration BC2622644 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Chancellor's

license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Chancellor is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the application or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Dr. Chancellor is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Chancellor is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC2622644, previously issued to Robert S. Chancellor, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

**Donnie R. Marshall,**  
*Deputy Administrator.*

[FR Doc. 99-20238 Filed 8-5-99; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 99-21]

#### Bryant D. Chomiak, Revocation of Registrations

On January 12, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Bryant D. Chomiak, M.D. (Respondent) of Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration BC2335912 and BC5019395 pursuant to 21 U.S.C.

824(a)(3) and deny any pending applications for renewal of such registrations pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in Nevada, the state in which he practices. The order also notified Respondent that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause that was sent to Respondent at his registered location in Henderson, Nevada was returned to DEA unclaimed. However, a signed receipt indicates that the Order to Show Cause sent to Respondent at his registered location in Las Vegas, Nevada was received on January 20, 1999. There was no response to the Order to Show Cause by Respondent or anyone purporting to represent him within 30 days of receipt of the order and the matter was transmitted to the Deputy Administrator on April 6, 1999, for final agency action.

On April 26, 1999, the DEA's Office of Administrative Law Judges received a letter from Respondent dated April 16, 1999, indicating that he was seeking reinstatement of his Nevada medical license; stating that the revocation of his Nevada medical license had nothing to do with his professional conduct; and seeking advice regarding the proper procedure to be followed in this matter. By letter dated May 3, 1999, the Hearing Clerk for the Office of Administrative Law Judges advised Respondent that it was unclear from his April 16, 1999 letter whether or not he was requesting a hearing. The Hearing Clerk then stated "that although your response to the Order to Show Cause is outside the time period specific in 21 CFR 1301.43, you may file with this office a written request for a hearing by May 14, 1999. Otherwise, you will be deemed to have waived your right to a hearing."

On May 18, 1999, Administrative Law Judge Gail A. Randall issued an Order Terminating the Proceedings in this matter. Judge Randall found that there had been no response to the May 3, 1999 letter from the Hearing Clerk, and therefore concluded that Respondent had waived his right to a hearing.

Thereafter, on May 19, 1999, the Office of Administrative Law Judges received a letter from Respondent dated May 16, 1999, in which Respondent stated that "I suppose, the best course is to request a hearing to explain my position formally." Since Judge Randall had already terminated the proceedings before her, the Hearing Clerk forwarded Respondent's May 16, 1999 letter to Government counsel for appropriate action. The investigative file, including all of the above-referenced documents,

has been transmitted to the Deputy Administrator.

The Deputy Administrator concludes that Respondent has waived his right to a hearing in this matter. The Order to show Cause specifically states that Respondent had 30 days from the date of receipt of the order to request a hearing. The Order to Show Cause was received on January 20, 1999, and no correspondence did not specifically request a hearing and was clearly outside the 30-day period for requesting a hearing. Nonetheless, Judge Randall gave Respondent a second chance to request a hearing. Respondent was given until May 14, 1999, yet Respondent's letter requesting the hearing was not filed with DEA until May 19, 1999, again outside the allotted time period. Therefore, Respondent is deemed to have waived his right to a hearing and the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificates of Registration BC2335912 and BC5019395, issued to him in Nevada. The Deputy Administrator further finds that on April 24, 1997, the Board of Medical Examiners of the State of Nevada (Board) ordered the summary suspension of Respondent's license to practice medicine in Nevada pending further proceedings. Thereafter, on July 15, 1997, the Board revoked Respondent's Nevada medical license. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in Nevada, and it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Respondent is not currently authorized to practice medicine and handle controlled substances in Nevada. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement