

Notwithstanding the Respondents' request that DEA withhold its decision regarding her Certificate of Registration pending completion of a Board hearing, there is no evidence before the Deputy Administrator that the Board has taken any action to lift the current suspension of the Respondent's medical license.

In her Opinion and Recommended Ruling, Judge Randall found that the Respondent is without State authority to handle controlled substances. The Deputy Administrator adopts the finding of the Administrative Law Judge.

DEA does not have 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 business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Muttaiya Darmarajeh, M.D.*; 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondents are currently without authorization to handle controlled substances in Louisiana. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Gilbert Ross, M.D.*, 61 FR 8664 (1996); *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

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 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC3404681, issued to Jacqueline Cleggett-Lucas, M.D. and JCL Enterprises, L.L.C. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

**John B. Brown III,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 02-52]

#### Francis A. Goswitz, M.D.; Revocation of Registration

On June 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francis A. Goswitz, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, AG0387604, pursuant to 21 U.S.C. 824(a). The Order to Show Cause alleged, *inter alia*, that the Respondent's Tennessee State medical license had been suspended.

By letter dated July 19, 2002, the Respondent, through legal counsel, requested a hearing in the matter. In the request for hearing, the Respondent's legal counsel acknowledged that the Respondent's medical license had been suspended by the Tennessee Department of Health, but argued that the matter "is pending, and a hearing on the merits has not yet been held."

On August 13, 2002, the Government filed a Motion for Summary Disposition and Stay of Proceedings, arguing that as of August 6, 2002, the Respondent's medical license remained suspended. On August 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel staying the filing of prehearing statements and providing the Respondent until September 4, 2002, to respond to the Government's motion. However, the Respondent did not file a response to the motion.

On October 8, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision) where she granted the Government's motion for summary disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Tennessee. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA Certificate of Registration be revoked and any pending applications for modification or renewal of that registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 12, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator for a final agency decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondent is currently registered as a practitioner under DEA Certificate of Registration AG0387604. On February 14, 2002, the Tennessee Board of Medical Examiners (Board) issued an Order of Summary Suspension with respect to the Respondent's Tennessee medical license. The Board's action was based in part upon a finding that the Respondent engaged in inappropriate sexual conduct with a patient, and subsequently attempted to influence her testimony by offering the patient money. The Board also found that in September 2001, the Respondent dispensed to a patient and her husband the controlled substances hydrocodone and alprazolam, for no legitimate medical purpose.

In its Motion for Summary Disposition, the Government attached a declaration from the Administrator of the Board, who asserted that the Respondent's Tennessee medical license remains suspended. Judge Bittner agreed with the Government that the Respondent is without state authority to handle controlled substances in Tennessee, and accordingly, granted the Government's Motion for Summary Disposition.

DEA does not have 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 business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Tennessee, the state where he currently holds a DEA registration. Therefore, he is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his Certificate of Registration should be revoked based upon allegations of his improper dispensing of controlled substances and other public interest grounds alleged in the Order to Show Cause. See *Samuel Silas Jackson, D.D.D.*, 67 FR 65145 (2002); *Nathaniel-Aikens-Afful, M.D.*, 62 FR 16871 (1997);

Sam F. Moore, D.V.M. 58 FR 14428 (1993).

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondent is currently without authorization to handle controlled substances in Tennessee. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd* sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers*, AFL-CIO, 549 F.2d 634 (9th Cir. 1977).

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 AG0387604, issued to Francis A. Goswitz, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

**John B. Brown III,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 01-30]

#### Michael D. Jackson, M.D.; Revocation of Registration

On June 8, 2001, the then-Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration to Michael Delano Jackson, M.D. (hereinafter referred to as "Respondent") of the Myrtle Beach Medical Center in Myrtle Beach, South Carolina. The Order to Show Cause notified the Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BJ5063532 pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f),

for reason that Respondent's continued registration with DEA would be inconsistent with the public interest.

Specifically, the Order to Show Cause outlined numerous allegations related to *inter alia*, the Respondent issuing various Schedules II through IV controlled substances for no legitimate medical purpose. Included among the drug purportedly prescribed in this fashion was OxyContin, a heavily abused Scheduled II narcotic controlled substance. The Order to Show Cause further notified the Respondent of the immediate suspension of his DEA Certificate of Registration, with the suspension to remain in effect until the final determination was reached in this matter.

By letter dated June 20, 2001, the Respondent acting *pro se* requested a hearing on the matter raised in the Order to Show Cause. Following the filing of various pre-hearing submissions by the respective parties, on May 22, 2002, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment (Motion). The Government asserted in its motion that the Respondent was without state authority to handle controlled substances in the State of South Carolina as well as in Alabama where he has apparently relocated his medical practice. On May 28, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel and Ruling on Motion affording the Respondent until June 11, 2002, to respond to the Government's Motion. However, the Respondent did not file a response.

On June 13, 2002, Judge Bittner issued her Opinion and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's Motion for Summary Disposition and found that the Respondent lacks authorization to handle controlled substances in South Carolina. In granting the Government's motion, Judge Bittner further recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to the Administrative Law Judge's Opinion and Recommended Decision, and on July 17, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator. Following a review of the record in this proceeding, the Deputy Administrator now enters his final order pursuant to 21 CFR 1301.46.

The Deputy Administrator finds that the South Carolina Department of

Health and Environmental Control (DHEC), Bureau of Drug Control, maintains a database of practitioners in South Carolina who possess valid state authority to handle controlled substances. On May 17, 2002, a DEA Diversion Investigator assigned to the agency's South Carolina District Office contacted DHEC and inquired whether the Respondent possessed state authority to handle controlled substances in that state. The investigator was informed that on June 14, 2001, DHEC revoked Respondent's state controlled substance license following the suspension of his DEA Certificate of Registration. DHEC divulged further that the Respondent surrendered his state medical license on June 29, 2001, and as a consequence, he lacks authority to handle controlled substances in South Carolina.

The Deputy Administrator's review of the records of the Alabama State Board of Medical Examiners reveals that the Respondent was also issued a controlled substance certificate in that state on June 29, 2001. That certificate expired on December 31, 2001. There is no evidence in the record that the Respondent's South Carolina medical license or his Alabama controlled substances certificate have been reinstated. It is clear that the Respondent lacks controlled substance authority in Alabama. In addition, since the Respondent is not currently authorized to practice medicine in the State of South Carolina, the Deputy Administrator finds it reasonable to infer that he is not authorized to handle controlled substances in that state as well.

DEA does not have 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 business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in South Carolina where he is registered with DEA, or in Alabama, where he has apparently relocated his medical practice. Therefore, the Respondent is not entitled to maintain his DEA Certificate of Registration. Because he is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to