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Constance K. Robinson,

*Director of Operations, Antitrust Division.*

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## Drug Enforcement Administration

[Docket No. 96-16]

### Dewey O. Mays, Jr., M.D.; Denial of Application

On November 24, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dewey O. Mays, Jr., M.D. (Respondent) of Dayton, Ohio, notifying him of an opportunity to show cause as to why DEA should not deny his application of January 3, 1994, for registration as a practitioner under 21 U.S.C. 823(f) as being inconsistent with the public interest.

On January 2, 1996, the Respondent filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. However, on January 23, 1996, the Government filed a Motion to Amend Order to Show Cause and for Summary Disposition, noting that the Respondent's license to practice medicine had been indefinitely suspended by the State Medical Board of Ohio by final order dated June 15, 1995, a copy of which was attached to the motion. The Respondent was afforded an opportunity to respond to the Government's motion on or before February 8, 1996, but no response was filed. On February 14, 1996, Judge Bittner issued her Opinion and Recommended Decision, (1) finding that the Respondent lacked authorization to practice medicine in Ohio, and, accordingly, lacked authorization to handle controlled substances in Ohio, (2) finding that the Respondent was thus not entitled to a DEA registration, (3) granting the Government's motion for summary disposition, and (4) recommending that the Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her decision, and on March 15, 1996, Judge Bittner transmitted the record of these proceedings and her opinion to the Deputy Administrator.

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 adopts, in full, the decision of the Administrative Law Judge. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 283(f) (authorizing the Attorney General to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substance under the laws of the state in which he or she practices); 802(21) (defining "practitioner" as one authorized by the United States or the state in which he or she practices to handle controlled substances in the course of professional practice or research). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that the Respondent is not currently authorized to practice medicine in Ohio. The Deputy Administrator agrees with Judge Bittner's finding that "[i]t is therefore reasonable to infer, and Respondent does not deny, that because he is not authorized to practice, he is also not authorized to handle controlled substances in Ohio." Likewise, since the Respondent lacks state authority to handle controlled substances, DEA lacks authority to grant the Respondent's registration application.

Judge Bittner also properly granted the Government's motion for summary disposition. The parties did not dispute that the Respondent was unauthorized to handle controlled substances in Ohio, the state in which he proposed to conduct his practice. Therefore, it is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. Dominick A. Ricci, M.D., 58 FR at 51,104; see also Phillip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11,873 (1978); *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 28 CFR 0.100(b) and 0.104, hereby orders that the Respondent's

application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective August 29, 1996.

Dated: July 24, 1996.

Stephen H. Greene,

*Deputy Administrator.*

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[Docket No. 96-7]

### David R. Nahin, M.D.; Revocation of Registration

On November 9, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David R. Nahin, M.D., (Respondent) of Waukesha, Wisconsin, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AN7645229, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for the reason that his continued registration would be inconsistent with the public interest.

On November 27, 1995, the Respondent, through counsel, filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. However, on January 19, 1996, the Government filed a Motion for Summary Disposition and to Stay Proceedings with copies of supporting documents. Specifically, the Respondent voluntarily had surrendered his medical license pursuant to a copy of the State of Wisconsin, Medical Examining Board's (Medical Board) Final Decision and Order dated April 28, 1993. Further, pursuant to an order of the Medical Board's dated August 9, 1994, the Respondent was granted a limited medical license which precluded him from having physician-patient contact. Also, a letter dated September 27, 1994, from the State of Wisconsin, Department of Regulation and Licensing, informed DEA that, "while Dr. Nahin is not prohibited from holding a DEA registration, use of the registration in prescribing medications would constitute a violation of his limited license."

The Respondent was afforded an opportunity to respond to the Government's motion on or before February 5, 1996, but no response was filed.

On February 15, 1996, Judge Bittner issued her Opinion and Recommended Decision, (1) finding that the Respondent, practicing medicine under