

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.

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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.

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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