

Cause was also sent to Dr. Hutchinson at his last known address in Illinois. The return receipt indicates that the Order to Show Cause was forwarded to another address in Illinois and was signed for on or about August 20, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Hutchinson 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. Hutchinson 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 1301.43(d) and (e) 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Hutchinson currently possesses DEA Certificate of Registration BH2898053 issued to him in Ohio. The Deputy Administrator further finds that on July 8, 1998, the State Medical Board of Ohio permanently revoked his license to practice medicine in the State of Ohio. Therefore, the Deputy Administrator concludes that Dr. Hutchinson is not currently licensed to practice medicine in Ohio, and as a result, 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 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Hutchinson is not currently authorized to handle controlled substances in the State of Ohio. As a result, he 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 BH2898053, previously issued to Archibald W. Hutchinson, 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 March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 99-36]

#### **Kenneth Leroy Jones, M.D.;** **Revocation of Registration**

On August 24, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Kenneth Leroy Jones, M.D. (Respondent) of Paintsville, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AJ1551399, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent was not currently authorized to handle controlled substances in the Commonwealth of Kentucky.

By letter dated September 17, 1999, Respondent requested a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 20, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Kentucky, however, he is not currently authorized by the Commonwealth of Kentucky to handle controlled substances. Respondent was given until November 10, 1999, to file a response to the Government's motion. Respondent failed to file a timely response.

On November 18, 1999, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the Commonwealth of Kentucky; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, however on November 30, 1999, Respondent filed a letter with Judge Bittner indicating that he no longer

wished to pursue this matter and asking that favorable consideration be given to any future applications for registration with DEA. On December 20, 1999, Judge Bittner transmitted the record of these proceedings to the Office of 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 Opinion and Recommended Decision of the Administrative Law Judge.

As a preliminary matter, the Deputy Administrator has not considered Respondent's letter filed on November 30, 1999, since it was not timely filed and Respondent has not offered any explanation for the late filing.

The Deputy Administrator finds that Respondent possesses DEA Certificate of Registration AJ1551399, issued to him at an address in Paintsville, Kentucky. The Deputy Administrator further finds that on January 7, 1999, the Commonwealth of Kentucky, State Board of Medical Licensure ordered the revocation of Respondent's Kentucky medical license. Respondent did not dispute that he is not currently authorized to practice medicine in Kentucky.

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Kentucky. As a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

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 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 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.* 58 FR 51.104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in Kentucky. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Kentucky. 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 0.014, hereby orders that DEA Certificate of Registration AJ1551399, issued to Kenneth Leroy Jones, M.D. 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 March 6, 2000.

Dated: January 18, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 99-31]

#### **Richard Eaton Leach, M.D. Revocation of Registration**

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard Eaton Leach, M.D. (Respondent) of Lake Charles, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL8792106, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Louisiana.

By letter dated August 19, 1999, Respondent filed a request for a hearing, listing a Lake Charles, Louisiana address. The matter was docketed before Administrative Law Judge Gail A. Randall. On September 1, 1999, Judge Randall issued an Order for Prehearing Statements. On September 23, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Louisiana, however he is not currently

authorized by the State of Louisiana to handle controlled substances. In addition, the Government requested that Judge Randall stay the proceedings pending her ruling on the Government's motion. In an order dated September 24, 1999, Judge Randall stayed the proceedings pending her ruling on the Government's motion and gave the Respondent an opportunity to file a response to the Government's motion.

Both the Order for Prehearing Statements and the September 24, 1999 order were mailed to Respondent at the address listed on his request for a hearing, however according to Judge Randall, both were returned to DEA with the notation "moved left no address, unable to forward, return to sender." Then, according to Judge Randall, the two orders were sent to Respondent's registered location in Jonesville, Louisiana. The Order for Prehearing Statements was returned to DEA with a notation "return to sender, not at this address," and the other order has not been returned.

On October 22, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent has waived his opportunity to reply to the Government's Motion for Summary Disposition. He is no longer receiving mail at his registered address nor at the address listed in his request for a hearing. Further he has failed to inform Judge Randall of any viable address. In her Opinion and Recommended Decision, Judge Randall also found that Respondent lacks authorization to handle controlled substances in the State of Louisiana; granted the Government's Motion for Summary Disposition; and recommended that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 22, 1999, Judge Randall transmitted the record of these proceedings 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. This final order replaces and supersedes the final order issued on January 3, 2000. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds based upon the evidence in the record that Respondent's license to practice medicine in Louisiana was indefinitely suspended on February 27, 1998. Additionally, by a letter dated April 20,

1998, Respondent was informed that his state license to possess, distribute, or prescribe controlled substances was suspended due to the loss of his medical license. No evidence was presented by Respondent to dispute that he is not currently authorized to handle controlled substances in the State of Louisiana. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in Louisiana, the state in which he is registered with DEA.

The 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 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 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Louisiana. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized 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 *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 AL8792106, previously issued to Richard Eaton Leach, M.D., 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 March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.