

Dated: October 10, 2001.

Asa Hutchinson,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jack's Sales, Inc.; Denial of Application

On September 5, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Jack's Sales, Inc. (Respondent), proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals pursuant to 21 U.S.C. 823(h) on the grounds that on June 12, 2000, the California Department of Justice, Bureau of Narcotic Enforcement (BNE), denied Respondent's application for a Precursor Business Permit. On October 12, 2000, Respondent filed a request for a hearing on the issue raised in the OTSC.

On October 18, 2000, the Government filed a motion seeking summary disposition, arguing that Respondent is not authorized to distribute or otherwise to handle listed chemicals in California, the jurisdiction in which it proposes to conduct business.

On October 23, 2000, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to Counsel granting Respondent until November 7, 2000, to file a response to the Government's motion. Respondent timely filed a response, asserting, in substance, that the BNE denied its application for a Precursor Business Permit on the basis of information provided to BNE by DEA; that Respondent had appealed the denial; that counsel for Respondent had spoken with a member of the BNE staff who said there would be a meeting within the next ten days to discuss respondent's appeal; and that this proceeding should be stayed pending the outcome of Respondent's BNE appeal.

The 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 Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

Loss of state authority to engage in the distribution of list I chemicals is grounds to revoke a distributor's

registration pursuant to 21 U.S.C. 824(a)(3). While the Controlled Substances Act does not specify that state licensure is a condition precedent to registration as a distributor of list I chemicals, it is well-settled that the Administrator may apply the bases for revoking a registration pursuant to 21 U.S.C. 824(a) to the denial of applications pursuant to 21 U.S.C. 823. See Anthony D. Funches, 64 FR 14268 (1999). Accordingly, DEA consistently has held that a person may not hold a DEA registration if that person is without appropriate authority pursuant to the laws of the state where he or she conducts business. See Anne Lazar Thorn, 62 FR 12847 (1997); Bobby Watts, M.D., 53 FR 11919 (1988); Robert F. Witek, D.D.S., 52 FR 47770 (1987); Wingfield Drugs, Inc., 52 FR 27070 (1987).

In the instant case, Respondent does not deny that it is not currently authorized to handle list I chemicals in the State of California, the jurisdiction where it conducts business. The Government attached to its motion a copy of a letter dated June 12, 2000, from the BNE to Respondent, denying Respondent's Precursor Business Permit, together with a copy of the applicable provision of the California Health and Safety Code governing permits and the application procedure.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she conducts business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); 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).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to handle list I chemicals in California, where it conducts business. The Administrator finds that Judge Bittner has allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to handle list I chemicals in the state where it conducts business.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of

material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom. *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the 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 application for registration as a distributor of list I chemicals submitted by Jack's Sales, Inc., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

Asa Hutchison,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Carla Johnson, M.D.; Denial of Application

On March 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Carla M. Johnson, M.D., (Respondent) notifying her of an opportunity to show cause as to why the DEA should not deny her application for DEA registration, pursuant to 21 U.S.C. 823(f), for reason that Respondent's registration would be inconsistent with the public interest. On May 8, 2000, Respondent filed a request for a hearing in this matter.

On August 10, 2000, the Government filed a Motion for Summary Disposition, asserting that Respondent is not currently authorized to handle controlled substances in the state in which she seeks a DEA Certificate of Registration, and attached a copy of an opinion from the Louisiana State Medical Board dated July 12, 2000, suspending Respondent's license to practice medicine in that State. On August 14, 2000, Administrative Law Judge Mary Ellen Bittner issued a memorandum to Counsel granting Respondent until August 29, 2000, to file a response to the Government's motion. As of this date, Respondent has failed to respond to the Government's motion.