

clearly excessive prescribing drugs as determined by the standard of the community of physician and surgeons." The investigative file contains no evidence that Dr. Purtell's medical license has been reinstated.

Therefore, the Deputy Administrator concludes that Dr. Purtell is not currently licensed or authorized to handle controlled substances in California.

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 practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See *Graham Travers Schuler, M.D.*, 65 FR 50,570 (2000); *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).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Purtell is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Purtell is also not authorized to handle controlled substances in California, the state in which she holds her DEA Certificate of Registration.

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 DEA Certificate of Registration AP1775064, previously issued to Allison E. Purtell, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Randall M. Schaffer, D.D.S.; **Revocation of Registration**

On August 6, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail

to Randall M. Schaffer, D.D.S., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registrations, AS1641554 and BS3509289, and deny any applications for modification or renewal, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that Respondent's registration would be inconsistent with the public interest. Following prehearing procedures, a hearing was held on March 28 and 29, 2000, in New Orleans, Louisiana.

On October 4, 2000, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of Administrative Law Judge, recommending that Respondent's registration be continued with restrictions. By letter dated November 21, 2000, Judge Bittner transmitted the complete record to the Deputy Administrator for final decision in this matter.

On January 11, 2001, the Government filed a request for remand with the Deputy Administrator. On January 26, 2001, the Administrator of the DEA remanded the record to Judge Bittner for further proceedings, because "(b) correspondence dated January 11, 2001, I was informed by counsel for the Government that new and previously unavailable evidence had recently been acquired by the Government, and that such evidence may affect the outcome of these proceedings."

On February 16, 2001, counsel for the Government filed the Government's Motion to Reopen Record and Admission of Supplemental Evidence. On February 27, 2001, Respondent filed the Respondent's Response to the Government Motion.

By her Ruling on Motion and Order Rescinding Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge dated March 27, 2001, Judge Bittner granted the Government's Motion and rescinded the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge issued October 4, 2000. In her Supplemental Opinion and Recommended Decision of the Administrative Law Judge dated March 27, 2001, Judge Bittner recommended that Respondent's DEA Certificate of Registrations be revoked and any pending applications for renewal be denied on the basis that Respondent lacks state authority to handle controlled substances.

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.

The additional evidence submitted by the Government consists of a Revised Decision of the Louisiana State Board of Dentistry (Board) dated September 20, 2000, ordering the revocation of the Respondent's license to practice dentistry in the State of Louisiana, and a letter from the Louisiana Department of Health and Hospitals to Respondent dated December 4, 2000, revoking Respondent's Louisiana Controlled Substance License.

The DEA does not have the statutory authority pursuant to the Controlled Substance 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 practices. 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 50,570 (2000); *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).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice dentistry in Louisiana, and furthermore, that Respondent's state authority to handle controlled substances has been revoked. Respondent does not deny that he is not currently authorized to handle controlled substances in the State of Louisiana. The Deputy Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Respondent cites no authority for his assertion that revocation of his DEA Certificate of Registrations would be premature and a violation of due process.

According, 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 DEA Certificate of Registrations, AS1641554 and BS3509289, previously issued to Randall M. Schaffer, D.D.S., be, and it hereby is, revoked, and any pending applications for renewal or modification and said Certificate be, and hereby are,

denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gary Phillip Venuto, M.D., Revocation of Registration

On July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Gary Phillip Venuto, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AV2928022, and deny any pending applications for renewal, pursuant to 21 U.S.C. 823(f) and 824(a)(4). On August 6, 2001, Respondent filed a request for a hearing in this matter.

On August 29, 2001, the Government filed a Motion for Summary Disposition, asserting that Respondent is not currently authorized to handle controlled substances in Utah, the state in which he practices. Specifically, the Government contends that, on April 23, 2001, Respondent entered into a Stipulation and Order with the Utah Division of Occupational and Professional Licensing, Department of Commerce (Division), pursuant to which the Division revoked Respondent's controlled substance license. The Government argues that DEA cannot register or maintain a registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he or she practices.

Respondent argues that pursuant to the Division's Order, which placed his medical license on probation for five years, "although (Respondent) is forbidden from direct contact with controlled substances, (he) is still a licensed practitioner who has authority to make decisions about his patients' controlled and addictive substance intake." Respondent argues there is no case law on the issue regarding whether a physician who has authority to make decisions about treating patients with controlled substances may retain his DEA registration.

On October 3, 2001, Administrative law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and

Recommended Decision granting the Government's Motion for Summary Disposition. The matter was thereafter transmitted to the Deputy Administrator for final decision on November 19, 2001.

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.

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 practices. *See* 21 USC 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 50,570 (2000); *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).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to handle controlled substances in Utah, the State in which he practices, according to the address listed on his DEA Certificate of Registration. The Deputy Administrator concurs with Judge Bittner's finding that the Division's Stipulation and Order prohibited Respondent from exercising independent judgment in determining whether patients should be treated with controlled substances, and further that Respondent was prohibited from handling controlled substances. The Stipulation and Order specifically states that Respondent "shall not be involved in any way regarding the patient's treatment regarding controlled substances or addictive medication." Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to handle controlled substances in the State of Utah.

The Deputy 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 5,661 (2000); *Jesus R. Juarez, M.D.*, 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.*, 48 FR 32,887

(1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

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 DEA Certificate of Registration AV2928022, previously issued to Gary Phillip Venuto, M.D., be, and it hereby is, revoked; and any pending applications for renewal or modification of said Certificate be, and hereby are, denied. This is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jonathan Weinstein, M.D.; Revocation of Registration

On June 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause (OTSC) by certified mail to Jonathan Weinstein, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BW5121948, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent is no longer authorized to handle controlled substances in the State in which he practices. By letter dated August 7, 2001, Respondent through counsel requested a hearing in this matter.

On August 21, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition (Government's Motion), arguing that Respondent is no longer authorized to handle controlled substances in the Commonwealth of Virginia, where Respondent's DEA Certificate of Registration states he conducts his business. The Government attached to its Motion a copy of an Order of the Department of Health Professions, State of Virginia, dated February 16, 2000, suspending Respondent's license to practice medicine and surgery. The basis for the suspension of Respondent's medical license was his February 4, 2000 felony conviction, in the United States District Court for the eastern District of Virginia, of possession of